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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

DAN GRIGSBY et al.,

Plaintiff,

vs.

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

Case No. 25STCV00832

[Exempt from filing fees under Government Code section 6103]

REPLY BY DEFENDANTS CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER AND CITY OF LOS ANGELES IN SUPPORT OF DEMURRER

Hon. Samantha Jessner
Department 7

Hearing Date: February 5, 2026
Hearing Time: 1:45 p.m.
Action Filed: January 13, 2025
Master Complaint Filed: October 8, 2025

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.

AND ALL RELATED CASES

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I. INTRODUCTION

No California precedent holds water utilities liable for inverse condemnation for failing to deliver water to fight a fire. A century of precedent holds that water utilities have no legal duty to deliver water for firefighting, absent some contract to do so, and are not liable for fire damages. Plaintiffs nevertheless ask this Court to take the unprecedented step of holding a water utility liable for fire damages because its public improvement did not suppress a fire that the City did not start. Neither precedent, nor the history of the California takings clause, nor public policy supports expanding inverse condemnation liability to Plaintiffs' claims.

Plaintiffs urge this Court to apply a line of Supreme Court cases expanding inverse condemnation liability in the flood control context, but the Supreme Court has expressly refused to apply those cases outside the "unique" context of flooding damage. Doing so here would run headlong into the unbroken line of precedent holding water utilities are not liable for fire damage. Even if the Court were writing on a blank slate, there is no evidence the 1879 amendment of the takings clause was intended to override the well-established American rule that water utilities bear no liability when their water system fails to suppress a fire. A century ago, the Supreme Court warned of the policy risks of converting water utilities—and ratepayers—into insurers against fire damage; those policy concerns are even more salient today.

Plaintiffs' remaining claims also fail. The power-based tort claims and claims about brush clearance are barred by statutory immunities. And Plaintiffs altogether fail to allege causation under the standards applicable to inverse condemnation and government tort claims.

II. ARGUMENT

A. The Water Inverse Condemnation Claim Should Be Dismissed.

Plaintiffs concede that water utilities have never had a legal duty to prevent fire damage, and they identify no precedent allowing an inverse condemnation claim to proceed against a water utility for failing to provide water to prevent fire damage. (Plaintiffs' Opposition Brief ("Opp.") at pp. 8, 11.) They nevertheless allege that water utilities in California are liable for taking or damaging private property if they fail to prevent damage caused by the "external hazard" of fire. (*Id.* at p. 7.) That is not, and has never been, the law in California. Unable to allege a cognizable

inverse condemnation claim under existing law, Plaintiffs ask the Court to expand a special doctrine that applies only to damage caused by failures of flood-control projects. This Court should reject Plaintiffs' invitation to massively expand takings liability.

1. Plaintiffs cannot state an inverse condemnation claim because their damages were not caused by the "inherent dangers" of the water system.

The failure of a municipal water system to prevent fire damage is not a constitutional taking. To state a claim for inverse condemnation, "the *inherent dangers* of the public improvement" must "materialize" and "cause [] the property damage." (*City of Oroville v. Superior Court* (2019) 7 Cal.5th 1091, 1106, italics added.) Burst pipes and water seepage are inherent dangers of a municipal water system; fire is not. Plaintiffs nevertheless argue the water system carried the "inherent risk that it would fail to provide enough water to fight fire." (See Opp. at pp. 3-5.) But the prospect that a public improvement might not sufficiently support a city in the performance of a separate public function (firefighting) is not an inherent danger of the improvement. Indeed, Plaintiffs concede their damages were caused by the "independently generated force" of fire. (*Id.* at p. 2.) That acknowledgment is dispositive. Because fire is not an "inherent danger" of reservoirs or hydrants—even defective ones—Plaintiffs cannot state an inverse condemnation claim for damages caused by fire. (See Mot. at pp. 13-15.)

Outside of the flood control cases discussed below, Plaintiffs fail to identify a single precedent allowing an inverse condemnation claim when the risk to property which materialized and caused damage was "independent" of the improvement, and the public improvement allegedly failed to mitigate that external risk. (Opp. at p. 2.) Plaintiffs' cited cases—*Pacific Bell*, *Holtz*, and *Simple Avo*—all involve damage inflicted directly on neighboring properties by the public work: water damage from burst pipes, foundation damage from an excavation, and fire from power lines. (See *id.* at pp. 4-5; *Pacific Bell v. City of San Diego* (2000) 81 Cal.App.4th 596; *Holtz v. Superior Court* (1970) 3 Cal.3d 296; *Simple Avo Paradise Ranch, LLC v. Southern Cal. Edison Co.* (2024) 102 Cal.App.5th 281.) In each case, the damage arose from a danger inherent in the improvement itself. But that is not true here: because fire is not an "inherent danger[]" of a water system, Plaintiffs cannot allege a takings claim. (*Oroville*, *supra*, 7 Cal.5th at p. 1103.)

A taking requires an improvement that creates the danger to property; liability cannot be based on a failure to stop some external risk from materializing and causing damage. (See Mot. at pp. 13-15.) The Court of Appeal affirmed that principle in *Wildensten*, holding that a park district could not be liable for inverse condemnation based on damages from a landslide where the government took no "affirmative action" that "exacerbated the landslide conditions." (*Wildensten v. East Bay Regional Park Dist.* (1991) 231 Cal.App.3d 976, 981.)

Plaintiffs wrongly urge the Court to ignore *Wildensten* because there the government failed to build a public improvement to mitigate the risk of landslides, whereas here, the City built an improvement that allegedly failed to adequately mitigate the risk that a fire would spread to their homes. (Opp. at p. 6.) But *Wildensten* held both that "passive ownership" of the land could not create a taking and also that that park district had "no duty . . . to correct all naturally occurring landslide conditions." (*Wildensten*, *supra*, 231 Cal.App.3d at p. 981.) Plaintiffs' theory of liability is indistinguishable from Wildensten's, and it is barred by *Wildensten*'s holding that that the government is not liable when it fails to prevent damage it had no legal duty to prevent. (*Ibid*.) The Supreme Court has repeatedly held that municipalities that build water systems do not undertake a duty to prevent fire damage. (*Niehaus Brothers Co. v. Contra Costa Wat. Co.* (1911) 159 Cal. 305, 312; Mot. at pp. 12-13.) Thus, *Wildensten* applies here with equal force: a municipality is not liable for a constitutional taking because a public improvement fails to prevent damage that the municipality has no duty to prevent in the first instance.[1]

Contrary to Plaintiffs' argument, liability for damages from natural hazards does not depend on whether the government *tried* to prevent the damage. For example, there is no taking when the government fails to prevent damage caused by the external force of wild animals, even when it has made efforts to mitigate the damage. (See *Moerman v. State of Cal.* (1993) 17 Cal.App.4th 452, 455, 459.) The guiding principle is that the government is not liable for property

[1] Plaintiffs contend that absence of a duty is irrelevant in the context of inverse condemnation. *Wildensten* shows otherwise, as it relies on the government agency's lack of duty to prevent landslides to explain why that agency could not be liable in inverse condemnation for failing to build a project that would prevent a landslide. (See *Wildensten*, *supra*, 231 Cal.App.3d at p. 981.)

damage caused by dangers it neither creates nor has any legal duty to control, even if it takes some action to prevent or mitigate the damage.

Under Plaintiffs' flawed interpretation of *Wildensten*, cities would face no risk of liability when they do nothing to mitigate natural hazards that threaten property, but they would be exposed to massive liability for making public improvements that fail to mitigate those same hazards. Adopting such a rule would disincentivize cities from even attempting to mitigate natural hazards through the construction of public improvements. Logic and public policy counsel against endorsing Plaintiffs' incorrect view of *Wildensten* and expansive view of takings liability.

2. This Court should not expand inverse condemnation to cover Plaintiffs' failure-to-prevent-damage theory.

The Court cannot and should not expand the Supreme Court's flood control precedents to create a takings claim whenever public "infrastructure" fails to "protect the community from natural disaster." (Opp. at pp. 7, 9.) Binding Supreme Court precedent leaves no room to create such a rule, and neither history nor public policy supports Plaintiffs' expansive takings theory.

(a) *The Supreme Court has refused to expand its flood control precedents to other contexts.*

Plaintiffs wrongly urge the Court to rely on *Belair* and its progeny for the proposition that a taking occurs whenever a public improvement "designed to protect the community" fails to protect property from an external danger. (Opp. at p. 6; see *Belair v. Riverside County Flood Control Dist.* (1988) 47 Cal.3d 550, 558.) *Belair* created a special inverse condemnation standard for flood control cases, holding that a government entity could be liable if a "public flood control improvement fails to function as intended" and "the failure was attributable to some unreasonable conduct." (*Id.* at p. 567.) Plaintiffs ask this Court to expand this special "failed to function" rule to their theory that LADWP's water system failed to provide enough water to stop a wildfire (Opp. at pp. 7-9), but the Supreme Court has expressly rejected expanding *Belair* beyond the flood control context and overruled cases that did so. (*Oroville*, *supra*, 7 Cal.5th at p. 1109 & fn. 3.)

In *Oroville*, the plaintiffs urged the Supreme Court to apply *Belair* and find takings liability whenever an improvement "failed to function as intended"—in that case because roots

and foreign objects blocked a sewer line, causing backup. (*Oroville*, *supra*, 7 Cal.5th at p. 1108.) The Supreme Court refused. (*Id*. at p. 1109 & fn. 3.) *Oroville* explained that "*Belair* addressed the unique problems of flood control litigation—arising in a distinctive context that bears only a limited relationship to our analysis of public improvements *in other contexts* . . . ." (*Id.* at pp. 1108-1109, italics added.) *Oroville* did not turn on some unique feature of sewage overflow cases, as Plaintiffs suggest (Opp. at p. 7); rather, it held that flood control was unique and refused to apply flood-control precedents in other inverse cases. Indeed, even before *Oroville*, the Court had described the flood cases as "a narrow and unique context." (*Bunch v. Coachella Valley Water Dist.* (1997) 15 Cal.4th 432, 436 ["The question here is whether, in the narrow and unique context of flood control litigation, *Belair*'s rule, as endorsed and refined by *Locklin* [citation] should apply when the public entity's efforts to divert water . . . fail and cause property damage . . . ."].)

Plaintiffs have not identified a single California precedent that applies *Belair* to a claim against a water utility for fire damage. Instead, Plaintiffs point to an unpublished federal case that recounts the facts of an unpublished and non-citable California case, which Plaintiffs argue applied *Belair* to support an inverse condemnation claim against a water utility. (Opp. at pp. 7-8, citing *Assn. of Cal. Wat. Agencies Joint Powers Ins. Authority v. Ins. Co. of the State of Pa.* (C.D.Cal., Oct. 16, 2014, No. 11-cv-01124, 2014 WL 12580236) at p. *4.) The federal case did not address inverse condemnation liability at all, and the non-citable California case was decided more than a decade before *Oroville* rejected the expansion of *Belair* outside the flood control context and overruled cases that had done so.

The Supreme Court's refusal to expand the flood control standards into other contexts makes sense, because the same rationale does not apply. The Supreme Court has explained that flood control projects "divert or rechannel potentially dangerous water flow," which reallocates naturally occurring flood risk. (*Bunch*, *supra*, 15 Cal. 4th at p. 451.) "Whatever choice the responsible agency makes [about flood control] will necessarily affect the patterns of flooding in the event the project fails, and will almost certainly increase certain risks in order to reduce others." (*Id.* at p. 450.) In other words, flood control projects reflect deliberate policy decisions by government agencies about how to channel water, and so the government may be liable when

that deliberately channeled water causes "direct physical damage" to some property. (*Locklin v. City of Lafayette* (1994) 7 Cal. 4th 327, 368.) That logic makes sense in the "narrow and unique context of flood control litigation," but there is no basis in precedent or policy to expand it to this claim. (*Id.* at p. 436.)

(b) *The Supreme Court and Legislature have refused to make municipal water utilities responsible for fire damages.*

Plaintiffs seek to expand takings liability to LADWP's water system despite an unbroken line of precedent holding that water utilities have no duty to provide water for firefighting and cannot be liable for failing to do so, as well as statutory immunities affirming the same important principle. (Mot. at pp. 12-13.) Plaintiffs urge the Court to disregard *Niehaus*, *supra*, 159 Cal. 305, and its progeny because inverse condemnation is a separate doctrine from tort law (Opp. at pp. 9-11), but Plaintiffs misunderstand the import of *Niehaus*.

First, the Supreme Court has held for more than 100 years that there is *no* duty to provide water for firefighting under the laws or Constitution of California, even when the water utility is allegedly negligent. (Mot. at pp. 12-13, 19; *Niehaus*, *supra*, 159 Cal. at p. 312.) To be sure, the plaintiffs in those cases did not assert inverse claims, but adopting Plaintiffs' novel theory would mean a century of precedent was beside the point, and the courts and plaintiffs in those cases were simply ignoring valid inverse condemnation claims. And, as *Wildensten* makes clear, the lack of a duty to supply water for firefighting supports the rejection of an inverse of an inverse claim for failing to prevent an external risk like fire. (*Wildensten*, *supra*, 231 Cal.App.3d at p. 981.)

Second, the flooding cases that Plaintiffs urge this Court to follow did not create a rule for inverse condemnation that would conflict with the common law; rather, in the flooding cases, the Supreme Court adopted the common-law "reasonableness" standard, thereby *harmonizing* the tort and constitutional rules for flooding damages. As the Court explained in *Locklin*, the modern rule is that a landowner may be liable in tort for flooding damages if it acts unreasonably; the Court applied that same standard to inverse claims, holding that a public entity that acts "unreasonably" and "disregard[s] the interests of downstream property owners" in the construction of a flood-control improvement can be liable in "tort or inverse condemnation" for water damage to

downstream properties. (*Locklin*, *supra*, 7 Cal.4th at p. 367.) Thus, the flooding cases recognize a consistent duty for landowners to act reasonably to protect downstream landowners from property damage. But applying the special rule of those cases here would create a direct conflict with a century of California law about the duties of water utilities.

The takings clause imposes liability when a government work itself inflicts damage on neighboring property—not when the government fails to use public improvements to protect property from external hazards. To hold otherwise would create a novel constitutional duty to protect private property from fire damage in conflict with a century of cases rejecting those claims.

(c) *History and public policy weigh decidedly against expanding takings liability.*

Even assuming precedent allowed expansion of inverse condemnation liability to an alleged failure of a municipal water system to supply water during a fire, the history of the takings clause and public policy counsel decidedly against extending liability.

The takings clause was intended to provide compensation for "special and direct damage" caused by public works. (*Customer Co. v. City of Sac.* (1995) 10 Cal.4th 368, 377, 380; see Mot. at p. 16.) Plaintiffs' theory asks the Court to expand liability to cases in which the public work inflicts no direct damage on private property but instead fails to sufficiently support another function—firefighting. Plaintiffs do not identify any evidence that the 1879 amendment of the takings clause to include compensation for property "damaged for public use" was intended to change the established principle—recognized by numerous American courts prior to 1879—that municipalities were not liable for failing to provide water for firefighting. (See Mot. at p. 17.)

Plaintiffs point to cases discussing the cost-spreading rationale for inverse liability, but none of those cases supports liability where the public improvement did not create the disaster. For example, in *Holtz*, the Court invoked the cost-spreading rationale to support inverse condemnation liability for property damage caused by excavations for BART train tunnels. (*Holtz*, *supra*, 3 Cal.3d at p. 303.) *Holtz* falls within the heartland of inverse condemnation cases: the construction of a public improvement directly damaged adjacent property. *Holtz* did not endorse cost-shifting for any damage linked in any way to a public improvement; it recognized

"the competing considerations which caution against an open-ended 'absolute liability' rule of inverse condemnation" and focused its holding on the damages directly inflicted by the street excavation at issue there. (*Id.* at p. 304.) Nothing in the cost-shifting rationale supplants the essential elements of a takings claim, including the requirement that the inherent dangers of the public work itself cause the property damage. Indeed, the cost-spreading rationale is intrinsically linked to the inherent danger requirement: while it is equitable to spread the inherent, latent costs of the public work throughout the community of taxpayers who benefit from the improvement, it would be highly inequitable to burden taxpayers with private damages incurred due to external, natural forces. And nothing in the cost-spreading rationale supports overriding more than a century of settled precedent rejecting fire damage claims against water utilities.

Plaintiffs nevertheless argue, as a policy matter, that LADWP ratepayers should be liable for paying for fire damages in the Palisades. (Opp. at pp. 10-11.) But this Court should heed the Supreme Court's clear warning in *Niehaus* against making water ratepayers the insurers of private property against fire damage. (*Niehaus*, *supra*, 159 Cal. at p. 316; Mot. at p. 18.) Water rates are not set to insure private property against fire damages. (*Niehaus*, *supra*, 159 Cal. at p. 320.) Extending inverse condemnation liability would do exactly that: LADWP ratepayers and Los Angeles taxpayers would become the insurers of fire damage for Palisades property owners. In fact, since the City filed its demurrer, dozens of the actual private insurance companies that insured Palisades properties have filed inverse condemnation claims against the City seeking billions of dollars in reimbursement from LADWP ratepayers for all Palisades Fire property claims based on an alleged failure of the LADWP water system. (E.g., *Orion Indemnity Co. et al. v. City of L.A.* (Super. Ct. L.A. County, No. 25STCV37686).) Transforming water utilities into fire insurance and re-insurance companies would not only run afoul of decades of precedent but also contravene clear public policy in this State against such destabilizing liability.[2]

[2] Plaintiffs' cost-spreading argument would impose a *de facto* duty on cities to prevent harms from natural disasters any time they chose to build public improvements to mitigate harms from such a disaster. This would effectively convert cities into insurers of last resort, discouraging investment in any public improvement designed to mitigate disasters, disincentivizing property owners from insuring, making taxes and rates unaffordable for many, and threatening municipalities' solvency.

3. Plaintiffs have not alleged a takings claim based on maintenance.

Because no inverse condemnation claim lies for failing to provide water to fight a fire, the Court need not reach the subsidiary question of whether Plaintiffs have adequately alleged such a claim based on a defective plan of maintenance. Nevertheless, even assuming (despite all of the discussion above) that a plaintiff could theoretically bring a takings claim against a water utility for fire damage, Plaintiffs' theory of defective maintenance does not state a claim.

As explained in the demurrer, to rest an inverse condemnation claim on maintenance of a public improvement, Plaintiffs' damages must arise from a deficient maintenance *plan*, not negligent maintenance execution. (Mot. at pp. 19-21.) The Complaint alleges the latter: that LADWP's purported failure to sufficiently inspect its floating cover was a "violat[ion]" of the City's official maintenance plan—not an official plan itself. (See *id.* at p. 20, quoting MC ¶ 164.)

Plaintiffs argue that in addition to the inspections, they challenge the absence of additional reservoirs, the reservoir cover material, the City Charter's competitive bidding mandates, and the decision to drain the reservoir pending repair. (Opp. at p. 12.) None of these allegations concerns an official maintenance plan of the agency that could be actionable under the Constitution. (See *Oroville*, *supra*, 7 Cal.5th at p. 1107; Mot. at p. 20.) Judges do not decide whether cities should build reservoirs, nor where. (See *Paterno v. State of Cal.* (1999) 74 Cal.App.4th 68, 97 ["Judges do not decide where to build dams and levees, nor how high."].) Plaintiffs may not sue under the takings clause for failing to upgrade the water system (see *ibid*.), nor can they obtain plenary judicial review of LADWP's operation of one reservoir in the system. Accordingly, even if an inverse claim were theoretically available here (and it is not), Plaintiffs still do not state a claim.

B. The Power-Based Tort Claims Should Be Dismissed.

1. Discretionary function immunity bars the power-based tort claims.

a. Plaintiffs challenge discretionary acts. Plaintiffs' power-based tort claims rest on two sets of fact allegations: (1) the decision not to de-energize certain power lines in the Palisades area, and (2) the decision not to allocate funds to improve power equipment. (MC ¶¶ 205-209,

216, 220-224, 228-230.)[3] Because these decisions involve "act[s] or omission[s] by a government actor that [allegedly] *created* the dangerous condition," discretionary function immunity bars the tort claims. (*Kabat v. Dept. of Transportation* (2024) 107 Cal.App.5th 651, 660, italics in original.)[4]

Funding and de-energization decisions require "personal deliberation, decision and judgment"—the hallmarks of discretionary government decision-making. (*Conway v. County of Tuolumne* (2014) 231 Cal.App.4th 1005, 1018.) Plaintiffs do not dispute that a decision regarding fund allocation is a "purely discretionary one." (*Taylor v. Buff* (1985) 172 Cal.App.3d 384, 390-391; Mot. at p. 24.) As for de-energization, no LADWP policy required the agency to shut off power in the Palisades; in fact, LADWP created a Wildfire Mitigation Plan under legislative authority that empowers a team of specialists to judge whether and when to de-energize lines, balancing the different safety and reliability considerations that attach to keeping lines energized or de-energizing them. (Mot. at pp. 22-23.) Plaintiffs argue the LADWP Plan created "mandatory" safety protocols (Opp. at p. 18), but the quoted provision expressly provides for discretion: "the blocking [of] specific reclosers within Tier 2 will be determined on a condition or incident-based basis." (*Id.* at p. 18, fn. 7, quoting Wildfire Mitigation Plan.)[5] Plaintiffs argue that whether the Palisades was in a Tier 2 or 3 zone is a fact question, but the judicially noticeable CPUC Fire Zone map on which Plaintiffs rely (see MC ¶ 49, fn. 3) shows clearly that the Palisades was in Tier 2. (See City's Request for Judicial Notice, Ex. B.)

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[3] Plaintiffs state without any citation to the Master Complaint that Defendants thought that lines were "already" de-energized or failed to implement a decision to de-energize. (Opp. at p. 15, fn. 4.) This is not what the Master Complaint alleges; but even if Plaintiffs made those allegations, the claims would be subject to discretionary function immunity for the same reasons explained here.

[4] The Master Complaint does not allege "dangerous conditions not created by the entity or its employees," i.e., a third-party, and so notice liability under Government Code section 835, subdivision (b), does not apply. (*Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 836.)

[5] Plaintiffs protest that Wildfire Mitigation Plan is not incorporated into their complaint, but they cite and quote portions of that plan (e.g., MC ¶¶ 205, 208-209), and Plaintiffs cannot quote the plan selectively. (See *Khoja v. Orexigen Therapeutics, Inc.* (9th Cir. 2018) 899 F.3d 988, 1002.)

Plaintiffs also argue that LADWP had a mandatory duty to de-energize because, although the Wildfire Mitigation Plan prohibited preemptive de-energization, "extreme fire conditions warrant[ed] immediate action to protect public safety." (Opp. at pp. 17-18.) But Plaintiffs identify no policy or law imposing that requirement; they are simply challenging how officials exercised their discretion, which is exactly what discretionary function immunity prohibits.

b. Discretionary function immunity applies to dangerous condition claims. Dangerous condition claims are not exempt from statutory discretionary function immunity. *Wright v. City of Los Angeles* (2001) 93 Cal.App.4th 683, considered and rejected Plaintiffs' argument that, because of the legislative comment to section 835, dangerous condition liability was "not subject to general discretionary immunity sections" found in the Tort Claims Act. (*Id.* at p. 688.) Section 835, the Court held, imposes liability for a dangerous condition unless another statute applies. (See *id.* at p. 689, citing Gov. Code, § 835].) The Court then explained that section 815 provides that any liability established in Part 2 of the Government Code (which includes section 835) "is subject to any immunity of the public entity provided by statute, including this [Part 2]." (*Id.* at p. 688.) Based on this "clear language in the statute," the Court held that all the immunities within Part 2 of the Government Code apply to the dangerous condition claims under section 835. (*Ibid.*) The Court also cited the legislative comment to section 815, which provides that "*immunity provisions will as a general rule prevail over all sections imposing liability*" unless sections clearly state otherwise. (*Id.* at p. 689, italics in original.)

Based on this reasoning, *Wright* held that the discretionary disease-prevention immunity provision in section 855.4 applied to dangerous conditions because it was located within Part 2. (*Wright*, *supra*, 93 Cal.App.4th at p. 689.) Here, the discretionary function immunity in section 820.2 is also located within Part 2, meaning that, under *Wright*, it applies to bar dangerous condition claims.

c. Plaintiffs' nuisance claim also fails. Where a dangerous condition claim fails, because of discretionary function immunity or otherwise, "it follows that the nuisance claim which mirrors that cause of action also cannot proceed." (*Avedon v. State of Cal.* (2010) 186 Cal.App.4th 1336, 1345 [sustaining demurrer to nuisance claim].) Plaintiffs cite *Nestle v. City of Santa Monica*

(1972) 6 Cal.3d 920, but *Nestle* simply recognized that it is possible to sue a public entity for nuisance; it says nothing about discretionary function immunity. (*Id.* at pp. 931-938.)

2. The California Emergency Services Act bars any DS-29 tort claim.

The City is not judicially estopped from taking the legally correct position that the immunity provisions of the California Emergency Services Act ("CESA") apply to the City. Judicial estoppel applies only where, among other requirements, a tribunal "adopt[s]" a party's position that is "totally inconsistent" with another position. (*Jackson v. County of L.A.* (1997) 60 Cal.App.4th 171, 183.) That did not happen here. *Fix the City* adopted the City's position that "Government Code § 8630 [addressing declarations of emergency] does not apply to charter cities, including respondent City of Los Angeles" because that statutory provision used the term "a city," which does not encompass charter cities. (Plaintiffs' RJN Ex. B at p. 8.) The CESA immunity provisions at issue here, by contrast, apply not to "a city" but to "any city," which includes charter cities.[6] (See *City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 912 [explaining that the Legislature often specifies "charter cities" or "any city" when intending to include charter cities]; *Marquez v. City of Long Beach* (2019) 32 Cal.App.5th 552, 569 [wage order that used the term "any city" applied to charter city].) Because *Fix the City* involved a different part of CESA using specific "a city" language—a point the *Fix the City* found decisive—judicial estoppel does not apply. And because the operator at DS 29 was unquestionably responding to an emergency when he allegedly tried but failed to de-energize a circuit because of an inoperable cord (MC ¶¶ 221-224), the "performance of" or "failure to perform" de-energization is immunized from liability. (*Labadie v. State of Cal.* (1989) 208 Cal.App.3d 1366, 1369; see Mot. at p. 24.)

3. The DS-29 allegations do not state a tort claim.

Setting aside immunities, Plaintiffs fail to plead a cognizable dangerous condition claim relating to DS-29 for two reasons. First, Plaintiffs point only to conclusory allegations in the

[6] The CESA immunity provision provides that "[t]he state *or its political subdivisions* shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty." (Gov. Code, § 8655, italics added.) "Political subdivision" is defined under section 8557, subdivision (b), to include "any city." (*Id.*, § 8557, subd. (b).)

Master Complaint that recite the elements of the claim, which is insufficient as a matter of law. (See MC ¶ 430; *Today's IV, Inc. v. L.A. County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1165.) Second, Plaintiffs fail to allege in the Master Complaint a causal connection between a City employee's negligence and a dangerous condition at DS-29. Plaintiffs point to paragraph 427 of the Master Complaint, but that paragraph does not allege that employee negligence *caused* the unsuccessful attempt to de-energize DS-29; rather, paragraph 427 alleges that LADWP equipment was in a dangerous condition "because [of] . . . LADWP['s] unsuccessful attempt to de-energize DS-29 circuits." (MC ¶ 427.)

C. Statutory Immunities Bar Plaintiffs' Vacant-Lot Claims

Under well-established natural-condition immunity, the City is not liable for leaving land in its natural state, even if that natural state includes overgrown brush. (See *Alana M. v. State of Cal.* (2016) 245 Cal.App.4th 1482, 1488.) The City could be liable only if it had some duty to alter the natural condition by clearing brush, but it does not have any such duty. Municipal Code section 57.4906.5 requires "person[s]" who own land in the City to engage in vegetation management, but the code section does not apply to the City. The code defines "person[s]" as a "natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, or organization, or the manager, lessee, agent, servant, officer or employee of any of them." (L.A. Mun. Code, § 11.01.) Courts interpreting analogous definitions have repeatedly held "persons" does not include government entities. For example, in *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1190, the Court held that "persons" under the California False Claims Act, defined as "any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust," does not apply to a public school district or any other public entity. (See also *Vedder v. County of Imperial* (1974) 36 Cal.App.3d 654, 662 ["persons" under the Health & Safety Code does not apply to a city].)

When the City does clear brush on city-owned lots, the Los Angeles Fire Department conducts that work as part of its firefighting efforts—and those efforts are protected by firefighting immunities. (MC ¶¶ 270-273; see *Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405, 410, 412; Gov. Code, §§ 850, 850.2, 850.4.) Plaintiffs cite *Vedder*, but there the city and county

were not engaged in fire protection services; they stored large quantities of gasoline and combustible chemicals that made the property more dangerous. (*Vedder*, *supra*, 36 Cal.App.3d at p. 659.) Here, the Master Complaint alleges that the City failed to engage in sufficient fire protection efforts—brush clearance—that would have allegedly made city-owned property safer. Firefighting immunities bar that theory. (Gov. Code, § 850; Mot. at pp. 25-26.)

D. Plaintiffs Fail to Adequately Allege Causation for All Claims

Other than conclusory assertions, the Master Complaint includes no allegations even attempting to connect allegations of deficient water supply or alleged secondary ignitions to specific property damage. A Master Complaint framework does not eliminate the causation elements from Plaintiffs' claims. Simply asserting that all damage was the result of all alleged wrongdoing is not sufficient to plead causation.

1. Plaintiffs' failure to allege that their damages were predominantly caused by the City's water or power systems requires dismissal of their inverse condemnation claims.

Plaintiffs' opposition does not address a key argument in the demurrer: to sustain an inverse condemnation claim, a plaintiff must allege that their damages "were 'predominantly' produced by the [public] improvement" (*Oroville*, *supra*, 7 Cal.5th at p. 1108) and the Master Complaint does not allege that any City water or power system improvement predominantly caused their damages. Nor could they. Plaintiffs allege that the Palisades Fire resulted from the rekindling of embers on State land from an earlier fire set by an individual. (MC ¶¶ 74-75.) While they contend that the City's water and electrical systems contributed to the fire's spread, they make the same claim against ten other defendant groups—including the State, the County, and multiple non-governmental entities—which only confirms that they are not alleging that their damages were caused mainly by the City's improvements. The failure to allege how property damage was predominantly caused by the City (as opposed to other entities) means the Fifth (Inverse Condemnation – Powerlines) and Sixth (Inverse Condemnation – Water Supply System) Causes of Action must be dismissed for failure to allege predominant causation.

2. Plaintiffs do not allege facts sufficient to create an inference of but-for causation on their power and brush clearance tort claims.

Plaintiffs' remaining four causes of action against the City are in tort and concern only the power system and brush clearance practices. The demurrer explained why Plaintiffs had to plead specific facts affording an inference that the City's acts or omissions were the *but-for* cause of each Plaintiff's damages.[7] (Mot. at pp. 26-27.) Plaintiffs' responses are unpersuasive.

First, while Plaintiffs argue they pled that "LADWP's energized power lines were *a cause* of plaintiffs' damages" (Opp. at p. 22, italics added), Plaintiffs do not claim that they allege "but-for" causation as to the power lines or brush clearance. Indeed, their cited allegations show that they do not assert but-for causation for these claims, nor do they allege facts giving rise to an inference of but-for causation. (See MC ¶¶ 234-236, 413, 428, 431, 436, 442, 449, 456-458, 460.) Instead, the cited Master Complaint provisions contain conclusory legal allegations—e.g., "proximately and substantially caused," "caused the injuries," or a "a substantial factor" (*id.* ¶¶ 413, 428, 431)—that do not qualify as "specific facts affording an inference" that each Plaintiff's damages would not have occurred but for a spot fire caused by an LADWP facility or brush on city property. (See *Christensen v. Superior Court* (1991) 54 Cal.3d 868, 900-901.)

Plaintiffs' omission of the required "but-for" causation allegations is not a mere technicality, but indicative of a fundamental flaw in the Master Complaint. Because the Master Complaint applies to plaintiff properties spread over vast distances, Plaintiffs cannot plausibly allege that spot fires associated with events like a power pole in a Malibu Village mobile home park (see MC ¶ 237) or brush on city-owned lots in the Castellammare neighborhood (see *id.* ¶¶ 269-280) were the but-for causes of all the property damage from the fire.

Second, Plaintiffs argue (correctly) that they need not *prove* their allegations at the pleading stage. But they do have to allege with particularity facts that create an inference of

[7] The lack of but-for causation allegations also justifies dismissing the inverse condemnation claims, including the water system claim. As the City has explained, Plaintiffs' own allegations contend that the fire spread rapidly and widely *before* any hydrants went dry. (Mot. at p. 27.) Regardless, because Plaintiffs concede they failed to allege that their damages were predominantly caused by any water system issues, the Court need not reach this additional basis for dismissal.

causation; they cannot simply assert that all the alleged wrongdoing caused all the alleged damage. (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795; *Christensen*, *supra*, 54 Cal. 3d at pp. 900-901.) Because there is not a natural inference of but-for causation between, for example, a spot fire in the Castellammare neighborhood and damage to property miles away, Plaintiffs had to allege specific facts that would afford such an inference. (Mot. at pp. 27-28.) The failure to plead facts to support but-for causation requires dismissal.

Finally, Plaintiffs wrongly suggest that in a mass action with a Master Complaint, some "more inclusive paradigm" is required. (Opp. at p. 23.) No authority—including the Supreme Court's decision in *Christensen*, *supra*, 54 Cal. 3d 868, or the Court of Appeal's decision in *Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540—endorses a relaxed pleading standard in mass actions. To the contrary, in *Christensen*—a mass action against funeral homes and crematoria that allegedly mishandled the remains of the plaintiffs' decedents—the Supreme Court repeated the established standard that "where the pleaded facts of negligence and injury do not naturally give rise to an inference of causation the plaintiff must plead specific facts affording an inference the one caused the others." (*Christensen*, *supra*, 54 Cal.3d at pp. 900-901.) The Court held that the plaintiffs in *Christensen* satisfied this standard by alleging facts to show "sufficiently direct causation between defendants' conduct and the emotional distress suffered by plaintiffs." (*Id*. at p. 901.) *Birke* is even further afield. The portion of that opinion Plaintiffs cite concerns whether the plaintiffs could satisfy the special injury requirement for a public nuisance claim. (*Birke*, *supra*, 169 Cal.App.4th at p. 1551.) It does not address the pleading standard for causation, much less endorse a lower standard for pleading causation in a mass action.

III. CONCLUSION

The City respectfully requests that the Court sustain the Demurrer to the Individual Plaintiffs' Master Complaint on all causes of action brought against the City.

DATED: January 15, 2026

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