SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DAN GRIGSBY, et al.,
Plaintiffs,

v.

CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER, a government entity; CITY OF LOS ANGELES, a government entity; CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, a government entity; STATE OF CALIFORNIA; SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation; EDISON INTERNATIONAL, a California corporation; CHARTER COMMUNICATIONS, a Delaware corporation; FRONTIER COMMUNICATIONS, a Delaware corporation; AT&T, Inc., a Delaware, corporation; COUNTY OF

Case No.: 25STCV00832

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

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

LOS ANGELES, a government entity; LAS VIRGENES MUNICIPAL WATER DISTRICT, a public utility; SEMPRA ENERGY, a California corporation; SOUTHERN CALIFORNIA GAS COMPANY, a California corporation; J. PAUL GETTY TRUST, a California charitable trust; MOUNTAIN RECREATION AND CONSERVATION AUTHORITY, and DOES 1 through 50, inclusive,

Defendants.

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

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

I. Procedural History

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

On January 13, 2025, Plaintiffs filed the initial complaint. On October 8, 2025, Plaintiffs filed a Master Complaint asserting 53

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

II. Master Complaint Allegations

In relevant part the Master Complaint alleges that:

The State operates the largest park system in the United States including Topanga State Park. (Revised Master Complaint ¶¶ 11, 366.) The State also owns numerous vacant lots in the Pacific Palisades "including but not limited to APN 4416-002-901, APN 4416-002-902, APN 4416- 002-903, 4416-018-900, APN 4416-004-900, 4416-027-904, and APN 4416-004-901." (*Id*. ¶ 393.)

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

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

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

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

III. Request for Judicial Notice

The State requests judicial notice of the following:

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

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

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

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

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

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

IV. Legal Standard

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal

3d 311, 318.) No other extrinsic evidence can be considered (i.e., no "speaking demurrers"). (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.)

A demurrer for sufficiency tests whether the complaint states a cause of action. (*Hahn v. Mirda* (2007) 147 Cal. App. 4th 740, 747.) When considering demurrers, courts "give the complaint a reasonable interpretation, and read it in context." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal. App. 4th 968, 994.) "A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed." (*SKF Farms v. Superior Ct.* (1984) 153 Cal. App. 3d 902, 905.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn*, *supra*, 147 Cal.App.4th at p.747.)

V. Analysis

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

The State contends that the Court should sustain its demurrer to the first and third causes of action for dangerous conditions on public property because (1) Plaintiffs fail to allege a dangerous condition within the meaning of Government Code section 830, (2) Plaintiffs fail to allege actual or constructive notice of the dangerous

condition, (3) the State is immune from liability pursuant to Government Code sections 850 and 850.2, and (4) the State is immune from liability pursuant to Government Code sections 845 and 831.2.

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

"'The sole statutory basis for imposing liability on public entities as property owners is Government Code section 835.'" (*City of Los Angeles v. Superior Court* (2021) 62 Cal.App.5th 129, 139.) "To establish liability under section 835, a plaintiff must prove that, at the time of injury, a dangerous condition existed on public property, that it created a reasonably foreseeable risk of the kind of injury suffered, and that it proximately caused the injury." (*Restivo v. City of Petaluma* (2025) 111 Cal.App.5th 267, 274.) "A plaintiff must also prove that a public employee's negligence or misconduct created the dangerous condition, or that the public entity had actual or

constructive notice of the condition a sufficient time before the injury to protect against it." (*Id*. at p.275.)

Dangerous Conditions (Lachman Fire Scar)

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

"The existence of a dangerous condition ordinarily is a question of fact, but the issue may be resolved as a matter of law if reasonable minds can come to only one conclusion." (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1133.) "Accordingly, if the facts pleaded by the plaintiff as a matter of law cannot support

the finding of the existence of a dangerous condition within the meaning of the statutory scheme, a court may properly sustain a demurrer to the complaint." (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 440.)

Here, Plaintiffs' claims for dangerous condition on public property are premised on the allegations that (1) the burn scar from the Lachman Fire six days earlier was a dangerous condition in Topanga State Park that resulted in the Palisades Fire (the first cause of action); and (2) the State owns numerous vacant lots in the Pacific Palisades that had overgrown brush in violation of the City of Los Angeles's brush clearance ordinances (the third cause of action). (Revised Master Complaint ¶¶ 367-372, 393.)

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

endanger those using the property itself." (*Bonanno, supra,* 30 Cal.4th at p.148.)

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

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

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

The Court of Appeal affirmed. (*Id.* at p.1346.) With regard to the homeowners' claim for dangerous condition of public property, the Court of Appeal noted that the allegations "suggest[ed] no

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

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

follow[ed] that the nuisance claim which mirror[ed] that cause of action also c[ould not] proceed." (*Ibid*.)

Here, there are *some* similarities to *Avedon*. The Revised Master Complaint suggests that the Lachman Fire may have been caused by a third party. (Revised Master Complaint ¶ 75.) In fact, the United States Attorney's Office, Central District of California, has brought charges against an individual for starting the Lachman fire. (Request for Judicial Notice "RJN" Exs. A-B [Criminal Complaint and Criminal Indictment].) However, unlike *Avedon*, Plaintiffs' claim based on a dangerous condition of public property is not premised on the fact that the State failed to stop this third-party from starting the Lachman Fire. Rather, Plaintiffs allege that the smoldering from the Lachman Fire's burn scar – a physical damage to Topanga State Park – caused the harm.

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

Plaintiffs respond by explaining that they have not alleged that the State's property at Topanga State Park was in a dangerous condition before January 1 but the dangerous condition was permitted to exist after January 1 when the Lachman fire was reported to be fully contained and then abandoned with full

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

inspecting the burn scar area after the LAFD completed its work to locate the underground ember that caused the reignition on January 7.

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

Dangerous Conditions (Overgrown Brush)

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

In relevant part, Plaintiffs allege that the State owned various unimproved lots in the Pacific Palisades with overgrown brush in violation of the City of Los Angeles's brush clearance ordinances on January 7, 2025. (Revised Master Complaint ¶¶ 287, 291-294, 393.) The City of Los Angeles's brush clearance ordinances require the

removal and maintenance of vegetation within 100 feet of buildings and makes a violation of these brush clearance ordinances a public nuisance. (*Id*. ¶¶ 291-293.) Plaintiffs allege that the overgrown brush on the State's property contributed to the spread and intensity of the Palisades Fire. (*Id*. ¶ 294.) Thus, Plaintiffs' allegations are that the overgrown brush on the State's unimproved lots in the Pacific Palisades constituted a dangerous condition because the overgrown brush was a public nuisance in violation of law.

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

Furthermore, the overgrown brush was not a nuisance as a matter of law. The immunity under Civil Code section 3482

precludes a nuisance cause of action against the State because it is expressly authorized by statute. "Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance." (Civ. Code, § 3482.) Pursuant to the judicially-noticed map, each of these unimproved lots owned by the State are part of the Topanga State Park. (Revised Master Complaint ¶ 287; compare RJN Ex. D [California State Parks map of area showing Topanga State Park].) The State is authorized to operate Topanga State Park pursuant to Public Resources Code section 5001 *et seq*. Under Public Resources Code section 5003, the State "shall administer, protect, develop, and interpret the property under its jurisdiction for the use and enjoyment of the public." (Pub. Resources Code, § 5003.) This includes maintaining the flora of Topanga State Park consistent with the legislature's stated purpose of state parks. "The purpose of state parks shall be to *preserve* outstanding natural, scenic, and cultural values, indigenous aquatic and *terrestrial fauna and flora* …. Each state park shall be managed as a composite whole in order to restore, protect, and *maintain its native environmental complexes* to the extent compatible with the primary purpose for which the park was established." (Pub. Resources Code, § 5019.53 [italics added].)

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

nuisance, Plaintiffs fail to allege that the overgrown brush was a dangerous condition.

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

Actual or Constructive Notice (Lachman Fire Scar)

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

The State argues in Reply that with regard to constructive notice of the underground ember that caused the rekindling on January 7, there is no allegation in the Master Complaint that there was any

visible indication of any flame, smoke or smoldering embers in the burn scar area from January 2 up until the report of the rekindling of the fire on January 7. The State further argues that the LAFD notified State Parks that the fire was fully contained and extinguished and that Plaintiffs fail to explain how the existence of smoldering on January 1 could provide notice of the burning ember that reignited on January 7, where there is no allegation of any visible indication of smoke or smoldering from January 2 until reignition on January 7. The State asserts, without citing any authority, that "plaintiffs must allege that there was some obvious indication of smoke or smoldering in a specific area that could reasonably be construed as causing the rekindling at the yellow dot origin point to the south of the southern perimeter of the burn scar."

In the operative complaint, Plaintiffs allege that the State had actual knowledge of the Lachman Fire as the State "was notified by telephone of the Lachman Fire, Incident #42 on January 1, 2025 at 00:27:14." (Revised Master Complaint ¶ 67.) Plaintiffs then allege that "[t]he State and its employees had actual and constructive knowledge of the dangerous condition in time to have taken measures to protect against it. Specifically, the employees of the State knew or should have known of the 'Particularly Dangerous Situation' and 'Extreme Fire Conditions' forecasted by the NWS days prior to January 7, 2025 and that any embers not fully extinguished from the Lachman Fire could start a dangerous wildfire." (*Id*. ¶ 376.) Plaintiffs assert in Opposition that "Since

members of the public could visibly see smoke coming up out of the ground in the Lachman Fire burn scar on January 1 and 2, so too could have State Park rangers have seen the smoke produced by the smoldering embers that remained on the State's land in the days following the Lachman Fire." Plaintiffs do not cite to the Complaint in connection with this assertion, however, earlier in the Opposition, they cite paragraph 70 which discusses a hiker seeing smoke still smoldering on the ground on January 1 after the LAFD left the area.

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

Relying on *State v. Superior Court for San Mateo County* (1968) 263 Cal.App.2d 396, the State contends that Plaintiffs' allegations are insufficient. However, the principle issue in *State v. Superior Court for San Mateo County* (1968) 263 Cal.App.2d 396 was "whether, *under the rules governing the disposition of motions for summary judgments* ([Citation]), there was any substantial evidence in petitioner's supporting depositions from which it could be inferred that the state had the actual or constructive notice

indicated in sections 835 and 835.2 of the Government Code as a prerequisite to the imposition of liability." (*State v. Superior Court for San Mateo County* (1968) 263 Cal.App.2d 396, 398.) Thus, this case does not constitute authority for what is sufficient to *plead* actual or constructive knowledge for purposes of Government Code section 835 at the pleading stage. (*California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1043 ["It is axiomatic that cases are not authority for propositions that are not considered."].)

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

Actual or Constructive Notice (Overgrown Brush)

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

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

Immunity Under Government Code sections 850 and 850.2

The State contends that it is immune from liability for the first cause of action under Government Code sections 850 and 850.2. "These sections 'provide for a *broad* immunity from liability for injuries resulting in connection with fire protection service. [¶] Sections 850 and 850.2 provide an absolute immunity from liability for injury resulting from failure to provide fire protection or from failure to provide enough personnel, equipment or other fire protection facilities. Whether fire protection should be provided at all, and the extent to which fire protection should be provided, are political decisions which are committed to the policy-making officials of government.'" (*Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 330, 335.) However, these statutes "should not be applied to allow a public entity to escape responsibility for damages resulting from its failure to provide fire protection on property which it owns and manages itself, particularly where it has permitted a dangerous fire condition to exist on the property." (*Vedder v. County of Imperial* (1974) 36 Cal.App.3d 654, 660–661.)

The parties offer many arguments in connection with the 850 and 850.2 immunity issue. The Court will endeavor to parse and address them. Plaintiffs argue that there is no governmental immunity for permitting a dangerous condition to exist on public property and that immunity only extends to fire protection services. Plaintiffs further argue that the immunity statutes do not say that the government is immune from any claim for damages caused by fire; instead immunity is limited to acts or omissions of fire department

employees with regard to fire protection services provided to the public while fighting fires. Here, plaintiffs assert, they do not allege that the State performed any firefighting activities on the Lachman Fire; LAFD did. Plaintiffs argue that logically, "fire protection services" do not extend to the State's failure to remove a known defect or dangerous condition that could start or cause a wildfire on its own property and the law requires that the property owner, whether or not it is a governmental entity maintain its property in a condition that it does not pose a risk of danger to its neighbors.

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

The facts of *Vedder* are discussed above. For the claim of dangerous condition of public property, the plaintiffs in *Vedder* alleged that the dangerous condition was "that normal airport operations and the operation of businesses involving storage of large amounts of gasoline and other highly combustible chemicals created a severe risk of fire and/or explosion; gasoline fires are controlled only by use of special equipment; [and] [the defendants] 'caused, permitted and encouraged' such operations with full knowledge that there were no means available to prevent or control gasoline fires." (*Vedder, supra,* 36 Cal.App.3d at 659.) The Court of

Appeal reasoned that "[o]ne who negligently stores gasoline and other highly combustible chemicals on his property, or knowingly permits such negligent storage, may be liable to others for a fire-incurred loss even though the fire was actually started by the negligent conduct of others." (*Id*. at 660.)

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

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

The State urges the Court to follow *Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 1340, and *Puskar v. City and County of San Francisco* (2025) 239 Cal.App.4th 1248. Plaintiffs distinguish

these two cases by arguing that the important distinction for those courts was whether the alleged dangerous condition is an impediment to firefighting (e.g. a closed fire road in *Cairns* and a missing fire extinguisher in *Puskar*) versus the cause of the fire itself which plaintiffs allege is the case here (the smoldering embers in the burn scar). Plaintiffs insist that there is a difference between starting a fire (consistent with the allegations in this case) and impeding the response to a fire (like *Cairns* and *Pulskar*).

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

The State also points out that *Varshock v. Department of Forestry & Fire Protection* (2011) 194 Cal.App.4th 635, a case upon which Plaintiffs rely for the proposition that immunity only applies when liability is based on an act or omission while responding to an actual fire, is inapposite because the State is not asserting immunity under section 850.4. The State also asserts that the following cases cited by Plaintiffs support a finding of immunity here: *City and County of San Francisco v. Superior Court* (1984) 160 Cal.App.3d 837 (fire on real property, individual ran 300 feet to firehouse to report the fire

but firefighters were at an "improper" dinner at another firehouse causing delay in addressing fire – 850 and 850.4 immunities apply; *People ex rel. Grijalva v. Superior Court* (2008) 159 Cal.App.4th 1072 (firefighters had brush fire 90% contained but failed to douse flames completely resulting in fire later burning out of control – 850, 850.2, and 850.4 immunities apply).

Plaintiffs also argue that the State cannot rely on inspection immunity. 818.6 doesn't apply to failing to inspect its own property. However, the State points out in Reply that it is not relying on 818.6 inspection immunity and *Cochran v. Herzog Engraving* (1984) 155 Cal.App.3d 405 makes clear that the "sweeping" language of sections 850, 850.2, and 850.4 preclude liability. The State argues that the allegations upon which the *Cochran* court determined that section 850 and 850.2 immunities precluded liability are similar to the asserted bases for liability here. The *Cochran* plaintiffs asserted that the City of San Mateo had a duty to inspect the location that burned in order "to correct or remedy any hazardous conditions liable to cause fire, and to require the use of adequate protective measures, including suitable fire detecting and extinguishing devices; and that the breach of these duties subjected it to liability." (Reply at 14 citing *Cochran* at 410). The State points out that here Plaintiffs allege that the State had a duty to inspect the burn scar area to correct or remedy a hazardous condition – the underground embers – that was likely to cause fire, and to use adequate protective measures, including suitable fire detecting devices such

as a thermal imaging device, and the failure to do so subjects the State to liability. But, *Cochran*, a case upon which Plaintiffs rely, makes clear that liability is precluded under section 850 based on these allegations here.

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

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

and Jan. 7 which resulted in reignition)? *Vedder* supports Plaintiffs' theory; *Cairns* and *Pulskar* support the State's theory that the allegations amount to the failure to provide fire protection services to the smoldering embers at the burn scar which is immunized conduct.

On demurrer, the Court cannot find, as a matter of law, that the allegations regarding the smoldering embers at the Lachman Burn Scar come within the immunities set forth in sections 850 and 850.2, i.e. they constitute the provision of fire protection services. Put differently, a factual record must be developed regarding smoldering embers, including, but not limited to, how they are handled, what risks they present, policies and practices regarding maintenance or surveillance of smoldering embers after a fire has been extinguished or controlled, factors that influence the treatment of smoldering embers (e.g. winds, geography), training regarding smoldering embers, equipment needed to address smoldering embers, responsibility to address smoldering embers, how they are characterized vis-à-vis the definition of "fire," etc. While the Court is acutely aware of the policy deeply imbedded in the law and statutes that under the Government Claims Act, liability is the rule and immunity the exception and immunity provisions will, "as a general rule prevail over all sections imposing liability" (*Cairns* at 334), the Court is also sensitive to the strong policy preference in California for deciding cases on their merits based on a full factual record (e.g. a summary judgment motion) rather than via a demurrer, which resolves cases on assumed facts without trial.

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

Immunities Under Government Code sections 845 and 831.2

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

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

Here, there is no allegation that the State failed to provide police protection. In fact, Plaintiffs plainly state in their Opposition that they do not allege the State is liable because it did not stop an arsonist from starting the Lachman Fire on January 1. Plaintiffs state that the Revised Master Complaint concerns what the State did and did not do after the Lachman Fire was contained "e.g. leaving an obvious and known dangerous condition on its property that six days later rekindled into the devastating Palisades Fire."

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

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

However, as Plaintiffs point out, the burn scar was not a natural condition of the State's property and the natural condition immunity does not apply to injuries that occurred on adjacent

properties. (*Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 835 ["We conclude that the natural condition immunity of section 831.2 is inapplicable to injuries caused to nonusers on adjacent property."].) Because Plaintiffs' injuries – the numerous houses burning down – occurred outside of the Topanga State Park, the natural conditions immunity of Government Code section 831.2 is inapplicable.[1]

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

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

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

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

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

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

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

In addition, "[n]othing which is done or maintained under the express authority of a statute can be deemed a nuisance." (Civ. Code, § 3482.) Pursuant to the judicially-noticed map, each of these

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

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

VII. Conclusion

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

Dated: _____

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SAMANTHA P. JESSNER
JUDGE OF THE SUPERIOR COURT