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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

PALISADES FIRE LITIGATION

DAN GRIGSBY, et al.,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED CASES

Lead Case No. 25STCV00832

INDIVIDUAL PLAINTIFFS' OPPOSITION TO DEMURRER BY DEFENDANTS CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER AND CITY OF LOS ANGELES

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

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

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants City of Los Angeles ("City") and Los Angeles Department of Water and Power ("LADWP') demurrer as to every cause of action brought against them in relation to water, power, and overgrown vacant lots. The Demurrer mischaracterizes allegations, causes of action, and the law. But the truth remains – Plaintiffs' Master Complaint states facts sufficient to constitute the causes of action related to water, power, and vacant lots. The demurrer should be overruled.

As to the water claims, the Palisades Fire victims plead inverse condemnation. LADWP designed and constructed a water-supply system that was dependent upon the 117-million-gallon Santa Ynez Reservoir to properly function . At the time of the Palisades Fire, that reservoir was empty and offline, and as a result water pressure in the entire Palisades' fire hydrant system collapsed. The system failed when it was needed most because of a series of deliberate design and maintenance decisions by LADWP, which created an inherent risk that the water-supply system would fail to meet the exact needs it was designed to fulfill. LADWP's deliberate decisions prioritized cost savings over system reliability, and the Master Complaint pled these decisions and consequences in detail. (*See, e.g.,* Master Complaint ("MC") ¶¶ 134-36, 145-48, 162, 164-75, 181-87). As a result of these decisions, when the Palisades Fire struck on January 7, 2025, the failure of the system was a inevitable. . Inverse condemnation applies squarely to these facts. Plaintiffs have appropriately alleged that LADWP's deliberate, cost-cutting design and maintenance decisions created inherent risks that materialized, and consequently the public infrastructure failed to function as designed thereby causing Plaintiffs' catastrophic losses.

LADWP's Demurrer accuses Plaintiffs of recasting a tort claim as inverse condemnation. But it is LADWP who is recasting Plaintiffs' legitimate inverse condemnation water claim as a contractual-breach-of-duty/tort claim. LADWP does so for the purpose of relying upon *Niehaus Bros. Co. v. Contra Costa Water Co.*, (1911) 159 Cal. 305—a century-old case decided on an express contract theory that has nothing to do with inverse condemnation; the words "inverse condemnation" do not even appear in the opinion. Further, LADWP's Demurrer improperly

invents two requirements found nowhere in California law, claiming that inverse condemnation liability requires (1) the public improvement to "create" the danger and (2) a preexisting duty to provide the public improvement. Neither is correct. When a public improvement built to protect against an independently generated force—like floods or fires—fails due to deliberate but unreasonable design and maintenance decisions, inverse condemnation liability follows to ensure that affected property owners will not bear more than their fair share of public undertakings.

The same is true for Plaintiffs' power claims – LADWP's failures should not fall solely on the victims of the Palisades Fire. Plaintiffs have pled a valid inverse condemnation cause of action as well as tort claims related to the failures of power equipment. The statutes cited by Defendants do not immunize them from Plaintiffs' power claims. Discretionary immunity does not apply to the ministerial acts alleged by Plaintiffs, nor does it immunize a governmental entity that creates a dangerous condition in violation of Government Code § 835 or a nuisance in violation of Government Code § 3479. The Emergency Services Act immunity also does not apply because Plaintiffs allege the violation of mandatory duties that occurred before the fire and, therefore did not involve "carrying out the provisions of" the California Emergency Services Act. Lastly, contrary to Defendants' arguments, Plaintiffs adequately allege a dangerous condition claim with respect to LADWP Distribution State 29 ("DS-29").

The Individual Palisades Fire victims request that the Court overrule the Demurrer.

II. ARGUMENT

A. The Demurrer Should be Overruled on Plaintiff's Water Claims

For nearly a year before the fire, LADWP left the Santa Ynez Reservoir empty after draining it. In so doing, LADWP eliminated 97.5% of Pacific Palisades' firefighting water capacity and kept the reservoir empty for months. (MC ¶186). When the Palisades Fire struck, water pressure collapsed, hydrants ran dry and helicopters could not quickly refill, substantially causing Plaintiffs' catastrophic losses. LADWP deliberately kept the reservoir empty knowing that it is was needed for the water-supply system to function as designed and constructed. This is a textbook case for inverse condemnation: a deliberately maintained public improvement presented an inherent risk that materialized and damaged private property. LADWP's Demurrer

invents requirements that appear nowhere in California law and ignores both controlling precedent and Plaintiffs' detailed allegations. The Demurrer should be overruled.

1. Plaintiffs Sufficiently State a Claim for Inverse Condemnation

Inverse condemnation under article I, section 19 of the California Constitution has four elements: (1) a deliberately designed, constructed, or maintained public improvement that (2) presented an inherent risk, (3) which substantially caused (4) plaintiff's property damage. *City of Oroville v. Superior Court*, (2019) 7 Cal. 5th 1091, 1105, *Mercury Cas. Co. v. City of Pasadena*, (2017)14 Cal. App. 5th 917, 928 . Plaintiffs adequately allege each one.

(a) LADWP's Water-Supply System is a Public Improvement

LADWP does not dispute that its water-supply system is a public improvement—"a project or use that involves '(1) a deliberate action by the state (2) taken in furtherance of public purposes.'" *Mercury Cas. Co. v. City of Pasadena*, (2017) 14 Cal. App. 5th 917, 928. LADWP built the Santa Ynez Reservoir to "increase fire protection" to "accommodate growth in Pacific Palisades." (MC ¶ 159.) And it later adopted a Wildfire Mitigation Plan acknowledging that firefighting agencies relied on its reservoirs and hydrants for that purpose. (*id.* ¶ 161; *see also id.* ¶ 160.) LADWP deliberately designed and maintained its water-supply system, which was "comprised of the Santa Ynez and Palisades Reservoirs, and associated pumps, water storage tanks and pipelines which provided potable water and water for the fire hydrants in Pacific Palisades." (*See, e.g.*, *id.* ¶ 419.) The water-supply system served "the whole community as distinguished from a particular individual." *Simple Avo Paradise Ranch, LLC v. So. Cal. Edison Co.*, (2024) 102 Cal. App. 5th 281, 308. This first element is undisputed.

(b) LADWP's Deliberate Design and Maintenance Decisions Created an Inherent Risk of Firefighting Failure

LADWP's deliberate decisions created a known, inherent risk of water pressure collapse and firefighting failure. The Master Complaint details how LADWP:

- Designed the system such that it would completely fail due to a substantial drop in water pressure if the 117–million gallon Santa Ynez Reservoir lacked sufficient water during a high-volume demand event (MC ¶¶ 134-36, 420);

- Covered the Santa Ynez Reservoir in a way that prohibited hover fills by helicopters despite initially designing the reservoir to support hover fills (*id.* ¶ 162, 195, 198-204);
- Continued to use a floating membrane cover that was known to tear without planning for quick and apt repairs (*id.* ¶¶ 168-71);
- Made the decision not to perform annual underwater inspections of the reservoir's cover, even though industry standards required annual inspections (*id.* ¶¶ 164-69, 187);
- Drained the reservoir and left it empty while repairing its cover (*id.* ¶¶ 172, 175, 185-86);
- Initiated a competitive bidding process for the cover's repair in June 2024, even though the contractor who originally installed the reservoir's cover submitted a repair proposal in February 2024—a delay that proved to consume six months before LADWP ultimately accepted that same contractor's bid in August (*id.* ¶¶ 170, 173, 181, 183, 185-86);
- Made the decision not to perform maintenance on the cistern at Pacific Palisades Reservoir, allowing it to crack and leak, and then leaving that that reservoir empty while the Santa Ynez Reservoir was drained (*id.* ¶¶ 162, 174, 182, 185-86, 195); and
- Left 1,350 fire hydrants in need of further inspection and repair, and maintained a fleet of hydrants with only a single, 2.5-inch outlet rather than the modern standard of a 4-inch outlet and at least one other outlet (*id.* ¶¶ 145-48).

These decisions prioritized cost savings over system reliability. "If [a] public entity makes a policy choice to benefit from the cost savings from declining to pursue a reasonable maintenance program . . . inverse condemnation principles command 'the corollary obligation to pay for the damages caused when the risks attending these cost-saving measures materialize.'" *Oroville*, 7 Cal. 5th at 1107 (quoting *Pac. Bell v. City of San Diego*, (2000) 81 Cal. App. 4th 596, 608). Put differently, although the public entity may choose to cut costs because it determines that "the likelihood of damage is remote, but the expense of additional protection is great," if "the undertaking of the project at the lower cost creates 'some risk, however slight, of damage to plaintiffs' property, it is proper to require the public entity to bear the loss when damage does occur.'" *Id.* (quoting *Holtz v. Superior Court*, (1970) 3 Cal. 3d 296, 310-11).

Because "public improvements must eventually be maintained and not merely designed and built," the inherent risk assessment "also encompasses risks from the maintenance or continued upkeep of the public work." *Id.* at 1091. For example, before the 2017 Thomas Fire, SCE "chose to forgo regular monitoring and repair of its aging electric infrastructure." *Simple*

Avo, 102 Cal. App. 5th at 307-08. Because SCE prioritized cost savings over reasonable maintenance program, the Court of Appeal affirmed the order denying SCE's demurrer to plaintiff's inverse condemnation claim. *Id.*

LADWP's cost-cutting measures in the deliberate design and maintenance of its water-supply system "resulted in the removal of 97.5% of the water storage capacity available for firefighting." (MC. ¶ 186.) This was literally playing with fire. LADWP "designed the system knowing that the system would completely fail during a high-volume demand event if the Santa Ynez Reservoir was taken offline." (*id.* ¶ 135.) With 117 million gallons missing from that reservoir, the Pacific Palisades Reservoir also sitting empty, and the myriad issues with the hydrants, the water-supply system presented the inherent risk that it would fail to provide enough water to fight fire.

(c) Plaintiffs Sufficiently Plead Causation of Property Damage

LADWP concedes that Plaintiffs' physical property was damaged, and Plaintiffs certainly pled property damage. (*See* MC ¶¶ 9-10). Plaintiffs pled causation as well. (*id.* ¶¶ 135-136, 198, 420-421). Causation is clearly pled and inferred from the facts and circumstances. *See, infra,* II.C. Plaintiffs have therefore pled all elements necessary to allege an inverse condemnation claim.

2. The Elements of Inverse Condemnation Do Not Include the Fabricated 'Requirements' LADWP Attempts to Import Into the Cause of Action

Rather than grappling with the actual elements of inverse condemnation, LADWP attempts to smuggle in fabricated requirements. Precedent, history, and public policy uniformly reject the LADWP's arguments. This Court should reject them as well.

(a) The Public Improvement Need Not Be the Initial Source of Danger or What Creates the Danger for Inverse Condemnation

LADWP first advances a false requirement that "the public improvement must itself *create* the danger to adjacent property that causes the damage." (Demurrer sections IV.A.2-3.) This non-existent "create-the-danger" requirement is a wishful invention by LADWP. LADWP attempts to conflate "create-the-danger" with what is actually required by law: a public improvement's inherent risk must be a substantial concurring cause of the damage. *Belair v. Riverside County Flood Control District*, (1988) 47 Cal. 3d 550, 560. In *Belair*, the California Supreme Court

rejected such conflation, articulating instead an "unreasonable risk of harm" standard for evaluating inverse condemnation liability for flood-control projects. *Id.* The Court made clear that a plaintiff may recover "where the public agency's design, construction or maintenance of a flood control project is shown to have posed an unreasonable risk of harm to the plaintiffs, and such unreasonable design, construction or maintenance constituted a substantial cause of the damages." *Id.* at 565 ("Inverse condemnation liability for failure of flood control projects is *not predicated upon proof that the public improvement made a preexisting hazard worse*." (emphasis added).)

None of the cases cited by LADWP support its invented "create-the-danger" rule. Despite LADWP's citation to *Oroville*, the "create-the-danger" rule appears nowhere in that case. *See* 7 Cal. 5th at 1105. Nor is the rule in *Wildenstein v. East Bay Regional Park District,* which stands for the basic proposition that a public entity is not liable for inverse condemnation when it merely owns undeveloped land without erecting a public improvement. *See* (1991) 231 Cal. App. 3d 976, 980. Likewise, the statement in *Paterno v. State of California* (*Paterno I*) that "the government need not provide any level of flood protection" does not excuse the government from potential liability *after* it installs a public improvement. (1999) 74 Cal. App. 4th 68, 96. In fact, LADWP overlooks how *Paterno* unfolded after remand: *Paterno v. State of California* (*Paterno II*), applying *Belair*, held that the defendant *was* liable for inverse condemnation for flood damage. *See* (2003) 113 Cal. App. 4th 998, 1028, 1033. Once the defendant chose to build a levee in the first instance, liability then followed from the defendant's deliberate unreasonable maintenance decisions. *See id.*

Belair and its progeny confirm that the Complaint presents a valid claim for inverse condemnation for four reasons. ***First***, although these cases generally involve water damage, classifying them all in this way would be an oversimplification. *Belair* and its progeny arise from different governmental acts that historically carried different legal consequences—some involve flood-control measures that would have been privileged at common law while others do not. *Compare Locklin v. City of Lafayette* (1994) 7 Cal. 4th 327, 365, *with Bunch v. Coachella Valley Water Dist.*,(1997) 15 Cal. 4th 432, 447. Across diverse fact patterns, courts have recognized that

inverse condemnation may lie where a public entity fails to restrain water, *see Belair*, 47 Cal. 3d at 560; *Paterno II*, 113 Cal. App. 4th at 1028; restrains too much water, *see Pac. Shores Prop. Owners Ass'n. v. Dep't of Fish & Wildlife* (2016) 244 Cal. App. 4th 12, 20, 53; fails to discharge water, *see Bunch*, 15 Cal. 4th at 438; and discharges too much water, *see Locklin*, 7 Cal. 4th at 341; *see also Arreola v. County of Monterey* (2002) 99 Cal. App. 4th 722, 744-45 (public entity failed to clear a channel of debris, causing levee to fail during storm). What unites these cases is a fundamental principle that individual property owners should not shoulder the burden when a public improvement designed to protect the community fails. *See Belair*, 47 Cal. 3d at 565. That rationale applies just as well for fires as it does for floods.

In fact, LADWP's attempt to cabin the *Belair* decision to flood control fundamentally misreads *Oroville*. LADWP cites *Oroville*'s footnote 3 to support its claim that *Belair* and cases involving floods "do[] not apply in other contexts." (Demurrer 15.) But that footnote disapproved of *Belair*'s application only in the "sewage overflow context"—a context where the public improvement itself discharged a damaging substance onto private property. *See Oroville*, 7 Cal. 5th at 1109 n.3 (citing *Cal. State Auto. Ass'n v. City of Palo Alto* (2006) 138 Cal. App. 4th 474). That is categorically different from this case, where—as in *Belair*—an independently generated natural force (fire, like the flood in *Belair*) was not contained by a public improvement designed to protect against it. The doctrinal thread uniting *Belair* and its progeny is not the presence of water but the relationship between the public improvement and an external hazard. When a public entity builds infrastructure to protect the community from natural disaster—whether flood or fire—and that infrastructure fails due to unreasonable design or maintenance, the cost-spreading rationale of the just compensation clause applies. *See Belair*, 47 Cal. 3d at 559 (recognizing that rainfall is an "independently generated force" external to the plaintiff's property). Wildfire is no less an "independently generated force" than rainfall and floodwater. The water system at issue here was built to protect Pacific Palisades from fire—just as levees are built to protect communities from flood. When LADWP's deliberate maintenance decisions rendered that protection illusory, the constitutional guarantee of just compensation should apply.

Second, California jurists have already applied *Belair* where a water district's system fails

to supply water for firefighting. *See Ass'n of Cal. Water Agencies Joint Powers Ins. Auth. v. Ins Co. of the State of Pa.* (C.D. Cal. Oct. 16, 2024) No. 11-cv-01124, 2014 WL 12580236, at *1. In *California Water Agencies*—an insurance coverage dispute—the court recounted how a water district had been held liable for inverse condemnation in the underlying state court action. There, the water district's pumps failed during a wildfire, leaving firefighters without functioning hydrants. *Id.* at *3.[1] The superior court denied the water district's demurrer and "rejected the Water District's arguments against inverse condemnation liability, finding that the plaintiffs' claims fell under a line of California precedent including [*Belair*]." *Id.* at *3. After that, the California Court of Appeal (denying petition for writ of mandate), the California Supreme Court (same), and another superior court judge (rejecting motion for judgment on the pleadings) all rejected the water district's attempts to defeat the inverse condemnation claim. *See id.* at *3. Finally, Justice John Trotter, an experienced wildfire judge, presided over a reference trial and confirmed liability for inverse condemnation. *See id.* at *5. The Court should do the same here.

Third, LADWP fails to explain why what is true for water damage is not also true for fire damage. LADWP protests that there is no constitutional duty to supply water for firefighting. (Demurrer 15.) But neither is there a duty to supply flood controls. LADWP threatens that it will spread the risk of future liability amongst ratepayers if it is held responsible for its deliberate maintenance decisions here. (*id* at 18.) But this concern also appears in cases involving floods, and it is mitigated by limiting liability to unreasonable conduct in the design, construction, and maintenance decisions of public improvements. *See Bunch*, 15 Cal. 4th at 451; *Belair*, 47 Cal. 3d at 565. At bottom, there is no reason why a flood case should not be applied to a fire case for

[1] Although not precedential, the case presents an underlying fact pattern that matches this case and a procedural history that persuasively demonstrates the applicability of inverse condemnation to these facts. *See Landmark Screens, LLC v. Morgan, Lewis & Bockius, LLP* (2010) 183 Cal. App. 4th 238, 251 n.6 ("[U]npublished federal cases . . . may properly be cited as persuasive, although not binding, authority."). By contrast, LADWP's reliance on *Travelers Excess & Surplus Lines Co. v. City of Atlanta* (Ga. App. 2009) 677 S.E.2d 388, is misplaced. There, plaintiffs recast a failure-to-warn tort claim as inverse condemnation, alleging the water department failed to notify firefighters about an inoperable hydrant. The court did not address whether a deliberately maintained public improvement substantially caused damage. *Id.* at 390.

inverse condemnation through the simple substitution of the appropriate nouns in *Belair*.

Fourth, should the Court agree with LADWP that strict-liability inverse condemnation does not apply to these facts, it could apply *Belair*'s rule of reasonableness. The reasonableness rule balances the "cost-spreading objective of the just compensation clause" with incentivizing public entities to invest in "further construction of public works." *Bunch*, 15 Cal. 4th at 451. At trial, Plaintiffs would be prepared to show that LADWP's "unreasonable conduct constituted a substantial cause of the damage they suffered." *Locklin*, 7 Cal. 4th at 368.[2]

(b) Inverse Condemnation Applies Regardless of Whether the Municipality Had a Duty to Provide the Public Improvement

LADWP advances a second false requirement that municipalities face inverse condemnation liability only for infrastructure they have a duty to provide. (Demurrer Section IV.A.1.) LADWP's anchor for this false premise is a case that has nothing to do with inverse condemnation: *Niehaus Bros. Co. v. Contra Costa Water Co.*, (1911) 159 Cal. 305—a century-old contract dispute that never mentions inverse condemnation. The court in *Niehaus* expressly stated that the case was based "solely on contract." *Id.* at 312. Inverse condemnation was not a cause of action in that case, nor was it at issue. The court's reference to the Constitution was in the context of searching for a duty to support tort or express contractual breach. Specifically, the opinion's referenced that "nothing" in the Constitution gave rise to a duty to furnish water. Thus, the reference was only in the context of determining whether there was any sort of separate *tort duty* that could be applied in a contractual claim. *Id.* The *Niehaus* case makes a good soundbite but in reality is inapt and a red herring.

LADWP's remaining authorities similarly sound only in contract, tort, or statute; none

[2] LADWP does not challenge the unreasonableness of its design and maintenance decisions, *see supra* section II.A.1.(b). *See, e.g.*, *Pac. Shores Prop. Owners Ass'n*, 244 Cal. App. 4th at 50. In any event, LADWP's unreasonableness is a factual question inappropriate for demurrer—discovery must develop the record on its decisions. *See Swaner v. City of Santa Monica* (1984) 150 Cal. App. 3d 789, 800.

even mentions constitutional takings.[3] LADWP thus builds its argument on cases that never considered—let alone addressed—the issue before this Court: inverse condemnation.

More troubling, LADWP's logic would make inverse condemnation claims rise and fall based on whether the Constitution imposes an obligation on a public entity to provide a specific public improvement. That is incorrect. There is no constitutional duty for public entities to create *any* public improvements. *See* Cal. Const. art. XI, § 9 (granting municipalities the power to provide public works including water and power but not imposing a mandatory duty to do so). Inverse condemnation "covers the proverbial waterfront of public improvements"—precisely because no such duties exist. *Oroville*, 7 Cal. 5th at 1103. The just compensation clause alone—not any improvement-specific duty—creates a public entity's obligation to compensate for property damage caused by public improvements. *See id.*; *see also* Cal. Const. art. I, § 19.

The progression of inverse condemnation law further reveals LADWP's error and, instead, supports Plaintiffs' claim. (Demurrer section IV.A.4.) Some early courts "limited inverse condemnation only to circumstances where a private party would be liable to the property owner for the injury." *Oroville*, 7 Cal. 5th at 1102; *see, e.g.*, *Archer v. City of Los Angeles*, (1941) 19 Cal. 2d 19, 24, *overruled*, *Locklin*, 7 Cal. 4th at 366. They did so based on the misunderstanding that the just compensation clause merely waived sovereign immunity and "create[d] no new causes of action." *Archer*, 19 Cal. 2d at 24. Under this regime, where a public entity's liability would have turned on a private entity's duty to provide water, LADWP's arguments might have made sense. Not anymore.

In 1965, the Supreme Court clarified that "the constitutional provision actually provided a broader basis for governmental liability." *Arreola*, 99 Cal. App. at 738 (citing *Albers v. Los Angeles County* (1965) 62 Cal. 2d 250). *Albers* held that a public entity could be liable in inverse

[3] *Town of Ukiah City* v. *Ukiah Water & Imp. Co.* (1904) 142 Cal. 173, 175 (contract and tort); *Stang v. City of Mill Val.* (1952) 38 Cal. 2d 486, 487-88 (Public Liability Act); *Heieck & Moran v. City of Modesto* (1966) 64 Cal. 2d 229, 230-231 (tort); *Luis v. Orcutt Town Water Co.* (1962) 204 Cal. App. 2d 433, 438 (contract and tort); *Stuart v. Crestview Mut. Water Co.* (1973) 34 Cal. App. 3d 802, 806 (contract and tort); *White v. So. Cal. Edison Co.* (1994) 25 Cal. App. 4th 442, 449 (negligence).

condemnation for damage even when a private party would not be liable for the same conduct. 62 Cal. 2d at 262-63 & n.3. The holding, based on the cost-spreading purpose of inverse condemnation, "did not derive from statutory or common law tort doctrine, but instead rested on the construction . . . of our constitutional provision." *Holtz*, 3 Cal. 3d at 296 (quotation omitted).

From that point, "the roots of inverse condemnation liability [lay] in constitutional terrain rather than the common law." *Oroville*, 7 Cal. 5th at 1103. As a result, the Supreme Court has gradually tailored its inverse condemnation jurisprudence to align with the cost-shifting purposes of the just compensation clause rather than with common law distinctions. *See Locklin*, 7 Cal. 4th at 365 (holding that flood-control measures that would have been absolutely privileged at common law are only conditionally privileged for inverse condemnation); *Bunch*, 15 Cal. 4th at 447 (holding that flood-control measures that would not have been privileged at common law are conditionally privileged for inverse condemnation). More recently, as discussed above, California jurists have recognized inverse condemnation liability in the context of a water-supply system's failure during a firefight. *Cal. Water Agencies*, 2014 WL 12580236, at *3.

This evolution from common law limitations to constitutional protections supports Plaintiffs' claim here. The Court should reject LADWP's attempt to return to the view that the just compensation clause created no new causes of action and to resurrect a duty requirement that California buried decades ago. The constitutional guarantee of just compensation does not vanish simply because a municipality had no antecedent obligation to build infrastructure. The Palisades Fire victims already lost their homes and property—they should not also shoulder the financial burden of LADWP's failed water system.

3. Inverse Condemnation Here Aligns with the Policy Behind the Just Compensation Clause

LADWP spends two pages warning that inverse condemnation liability here will cause the sky to fall. (Demurrer section IV.A.4. at p. 18-19). LADWP even claims it would stop providing water in Los Angeles altogether if it can be held liable here. This is nonsensical hyperbole.. The remedy of inverse condemnation exists precisely for this situation.

First, for an inverse condemnation claim, the "decisive consideration" is whether

uncompensated owners would "contribute more than [their] proper share to the public undertaking." *Holtz*, 3 Cal. 3d at 296. LADWP serves four million residents; the failure of some public improvements in the system should not be borne solely by the Palisades Fire victims.

Second, LADWP's parade of horribles regarding municipal liability is a familiar, but unpersuasive, refrain. Courts have long recognized cost-shifting purposes despite such warnings—including at the dawn of California's modern inverse condemnation jurisprudence and in its initial application to flood levees. *See Albers*, 62 Cal. 2d at 263 (recognizing inverse condemnation liability even though "fears have been expressed that compensation . . . will seriously impede, if not stop, beneficial public improvements"); *Belair*, 47 Cal. 3d at 565. The policy reasons behind *Belair*'s reasonableness rule are why it should apply here: the rule would further balance the need to encourage public improvements with the guarantee that the "clearly enormous" burden of an improvement's failure should not be unfairly allocated to those who suffer damage. *Belair*, 47 Cal. 3d at 565; *cf. Pac. Bell*, 81 Cal. App. 4th at 614-15; *see also supra* section II.A.2.(a).

4. LADWP's Maintenance Decisions Constitute an Unreasonable Plan

LADWP's final gambit—that Plaintiffs merely allege poor execution of a reasonable maintenance plan (Demurrer section IV.A.5)—fails for three reasons.

First, Plaintiffs allege an unreasonable plan itself: "LADWP deliberately elected to forego annual underwater inspections of the floating cover." (MC ¶ 187.) Plaintiffs also cite to an LADWP email identifying that LADWP's "past practice" was to inspect reservoirs underwater only once every three years. (*Id.* ¶ 167.) This distinguishes *Paterno I*, where the plaintiff initially challenged only departures from a lawful maintenance plan. 74 Cal. App. 4th at 90.

Second, if anything, *Paterno I* supports Plaintiffs. It recognizes that a defendant can both fail to execute plans *and* adopt unreasonable ones. The court remanded for the plaintiff to show that the State adopted one of seven "possibly unreasonable plans." *Id.* at 91-99. Here too, besides the underwater inspections, Plaintiffs allege that LADWP adopted multiple unreasonable plans: designing a system dependent on a single reservoir; maintaining tear-prone covers that preclude helicopter access; soliciting competitive bids; and leaving both reservoirs simultaneously empty

knowing the risks. *See supra* section II.A.1.(b). The Demurrer's silence as to these plans speaks volumes.

Third, to the extent Plaintiffs have alleged that LADWP failed to follow its inspection plan, that allegation does not detract from Plaintiffs' inverse condemnation allegations. Inverse condemnation attaches "whether it was intentional or the result of negligence by the public entity." *Oroville*, 7 Cal. 5th at 1106; *see also Simple Avo*, 102 Cal. App. 5th at 325 (rejecting the notion that negligence as a concurrent cause absolves defendants of inverse condemnation liability).

5. It is Not Fire Victims Who Are Recasting Fire Victims Inverse Condemnations Claims as Tort Claims – It is LADWP

Inverse condemnation in California is not a tort claim in disguise. Plaintiffs are not "recasting a tort claim as a constitutional takings claim" as LADWP would mislead the Court into believing. (Demurrer at p. 19:4-5). This defensive soundbite could probably be asserted in the vast majority of inverse condemnation cases where, characteristically, something has clearly gone wrong that caused a public improvement to fail, leading to destruction. But inverse condemnation is a distinct constitutional cause of action focused on just compensation, regardless of fault, blame or negligence. The California Supreme Court has repeatedly emphasized that inverse condemnation liability does not rest on negligence or wrongful conduct, but on the principle that the costs of public improvements should be borne by the community as a whole rather than individual property owners. *See, e.g., Oroville,* 7 Cal.5th 1091.

The case relied upon by Defendants in support of its 'recasting' argument is entirely inapposite. In *Customer Co. v. City of Sacramento* (1995) 10 Cal. 4th 368, the Supreme Court unsurprisingly held that governmental immunities would be nullified if an inverse claim were allowed to proceed where "the property damage for which Customer seeks to recover bears no relation to a 'public improvement' or 'public work' of any kind." *Id.* at 383 (finding no inverse condemnation claim for damage caused by police officers shooting tear gas into plaintiff's property while apprehending an armed suspect on the property property). That is a far cry from this case, where the inverse condemnation claim stems from LADWP's reservoirs and other parts of its water supply system, all of which are undisputed public improvements. *See supra* II.A.1.a.

The legislature might have extended immunities for inverse condemnation when public infrastructure fails in the Government Code, but it did not. Inverse condemnation and the rule of compensability stems from the constitution, not statutory or common law doctrine. *See Holtz v. Superior Court* (1970) 3 Cal.3d 296, 303–304. The legislature did not, and has not, extended Government Code immunities to inverse condemnation claims.

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LADWP's water system failed when Pacific Palisades needed it most. Two reservoirs were empty and out-of-service. Water pressure collapsed. Firefighters were left with dry hydrants and no local water source for its air attack. LADWP cannot escape the constitutional mandate of just compensation. When a public entity's deliberate maintenance decisions create inherent risks that substantially cause property damage, the entity—not individual property owners—must bear the cost. *Oroville*, 7 Cal. 5th at 1107. The courthouse doors should remain open to Plaintiffs, and the Demurrer should be overruled.

B. <u>The Demurrer Should Be Overruled As To Plaintiffs' Power Claims</u>

Defendants demur to all of Plaintiffs' power causes of action . However, Defendants make no argument as to Plaintiffs' inverse condemnation power claim except to the extent it is included in the misguided but-for causation argument. *See infra* section II.C. The Master Complaint pleads causation. (MC ¶¶ 207, 227, 232, 233, 235, 238-240, 413). Accordingly, the Demurrers silence as to the power inverse condemnation claim (the fifth cause of action) is a concession that it is sufficiently pled. The Demurrer instead focuses on immunities that defendants contend eliminate the remaining power tort-based causes of action. But as explained below, the immunities do not apply, and Plaintiffs' claims should be permitted to move forward.

1. Statutory Immunities Do Not Protect LADWP Against The Alleged Dangerous Conditions Caused By Implementation-Level Acts And Omissions

The immunities asserted by LADWP do not apply because LADWP's errant actions and inactions as to Plaintiffs' power-based tort claims occurred on an implementation level (not a

policy/decision-making level[4]) and created a dangerous condition that pre-existed the actual emergency. (Gov. Code §§ 835, 835.2.) Moreover, "discretionary function" immunity does not apply to dangerous condition nuisance claims such as those alleged by Plaintiff. Accordingly, the Demurrer for discretionary function immunity should be overruled.

2. Plaintiffs' Dangerous Condition Claim Is Not Subject to Discretionary Immunity

Government Code section 835 codifies the dangerous condition of public property statutory cause of action. The Legislative Committee comment for that statute makes clear that the dangerous condition code "section is not subject to the discretionary immunity that public entities derive from Section 815.2." Gov Code § 835; *see also Hill v. People ex rel. Dept. of Transportation* (1979) 91 Cal.App.3d 426, 432 ("a public entity has no discretion to create a dangerous condition of its property" and citing the Legislative Committee comment). The language is clear – discretionary immunity does not apply. But the comment of the legislature is conspicuously missing from Defendants' Demurrer. Ignoring the language, Defendants misleadingly argue that discretionary immunity applies to dangerous condition claims vis-a-vis a contrived work-around – Government Code section 820.2 (individual public employee discretionary immunity). Defendants incorrectly reason that if the public employee is immune, then so is the public entity. (Demurrer 21-22.) None of the cases that Defendants cite hold that discretionary function immunity applies to dangerous condition or public nuisance claims. *See Conway v. County of Tuolumne* (2014) 231 Cal.App.4th 1005; *Wright v. City of Los Angeles* (2001) 93 Cal.App.4th 683; and *Taylor v. Buff* (1985) 172 Cal.App.3d 384. Furthermore,

[4] Defendants wholly mischaracterize Plaintiffs' allegations when it avers in the demurrer that "Plaintiffs allege that the City's **decision** not to de-energize certain power lines in the Palisades area led to spot fires." (Demurrer 22 (Emphasis added).) In fact, Defendants either thought that certain lines were *already* de-energized or else failed to implement its decision to de-energize. Moreover, Defendants mischaracterize as "speculative" whether they "would have decided" to use automatic "reclosers" to shut off power, had they existed. Plaintiffs do not need to speculate because they already know Defendants *did* decide to de-energize and simply bungled the de-energizing implementation on a ministerial level. *Id.* Furthermore, Plaintiffs are not broader than Defendants suggests. (*See, e.g.,* MC ¶ 427).

Plaintiffs are not suing for damages resulting from an act of omission of a public employee (Gov. Code § 820(a)) but rather for liability flowing from dangerous conditions on public property and public nuisance. Government Code section 815 (public entity discretionary immunity) "does not bar nuisance actions against public entities" when such actions are founded on Civil Code section 3479. *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 937. Defendants' argument fails – discretionary immunity does not immunize liability for the pled causes of action.

LADWP's historic maintenance failures—resulting in an inability to operate (de-energize) powerlines before or during high-risk weather events due to neglected and degraded components—lie squarely within Government Code section 835 dangerous condition liability. "[W]hen a public entity has actual or constructive notice of a dangerous condition, the entity's liability may be predicated on its failure to take protective measures to safeguard the public from dangers that may not necessarily be the entity's own creation." *Peterson v. S.F. Cmty. Coll.* (1984) 36 Cal. 3d 799, 811.

Plaintiffs sufficiently plead a cause of action for a dangerous condition of public property[5], alleging that the City had actual or constructive notice of the unsafe condition but negligently failed to remedy or warn of it, despite having sufficient time to take corrective measures. The Master Complaint specifically alleges the facts supporting the dangerous condition cause of action at paragraphs 205 to 247 and 425 to 431.[6] The existence of a dangerous condition is ordinarily a question of fact. *Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347.

[5] Plaintiff alleges the dangerous condition was reasonably foreseeable and was a proximate cause of the injury, and either the condition was created by a negligent or wrongful act of the public entity's employee or the public entity had actual or constructive notice of the condition and sufficient time to remedy it. (*see* MC at 48-61, 205-247, 409-416, 425-444.)

[6] *See,* e.g., paragraph 244: LADWP had a duty to properly construct, inspect, maintain and operate its water supply and its overhead electrical transmission and distribution systems in a manner that did not create a dangerous condition as well as an inherent risk of fire and fire spread. The LADWP violated these duties ...." (MC ¶244).

3. The Acts and Omissions Alleged Were Not Discretionary Acts

Discretionary function immunity does not pertain to Plaintiffs' allegations for the reasons already stated. But moreover, the allegations aren't discretionary in nature. LADWP did not even know what was or was not energized before the fire, what was or was not in disrepair and that it would be unable to de-energize critical lines before the predicted high-wind event, even though they tried. (MC ¶¶120-126, 155-150, 160-165.) LADWP's altered logs and records related to delayed arrival and inability to shut off power in time, reinforce the allegation that they did not know the true status of their system. (*id.* ¶¶ 200-205.) Other degraded and dilapidated LADWP equipment—such as worn-out, wooden power poles holding live wires and transformers—broke and started more fires, aggravating the ongoing fire event. (*id.* ¶¶ 3, 9-10, 48-61, 205-246, 425-462.) Catastrophic harm resulted.

The Supreme Court has stated that "a 'workable definition' of immune discretionary acts draws the line between 'planning' and 'operational' functions of government. [Citation.] Immunity is reserved for those '*basic policy decisions* [which have] … been [expressly] committed to coordinate branches of government,' and as to which judicial interference would thus be 'unseemly.'" *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 981, quoting *Johnson v. State of California* (1968) 69 Cal.2d 782, 793–794 (italics in *Johnson*). On the other hand, "lower-level, or 'ministerial,' decisions that merely implement a basic policy already formulated" are not immune under section 820.2. *Caldwell,* 10 Cal.4th at p. 981; *see also Elton v. County of Orange* (1970) 3 Cal.App.3d 1053, 1057; *Lopez v. Southern Cal. Rapid Transit Dist*. (1985) 40 Cal.3d 780, 794.

LADWP's own Wildfire Mitigation Plan, mandated by Public Utilities Code Section 8387, creates enforceable duties. While the statute grants discretion to develop protocols, once adopted, compliance with those protocols becomes **ministerial**. *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 499 (emphasis added). The Plan's stated policy against "preemptive de-energization" does not insulate LADWP from liability when extreme fire conditions warrant immediate action to protect public safety. Once the fire started, it was no longer a case of

"preemptive de-energization".[7]

Moreover, when the National Weather Service issues Red Flag Warnings with specific wind speed and humidity criteria, utility responses become ministerial rather than discretionary. Discretionary immunity does not apply when specific conditions trigger mandatory safety protocols. *See Thompson v. City of Lake Elsinore* (1993) 18 Cal.App.4th 49 (immunity applies only to discretionary acts, not to mandatory duties.). "Although government officials exercise some decision-making power in implementing basic policy decisions, or in 'operational' matters, that level of decision-making in the face of mandatory duties is not within the scope of immunity provided by the Tort Claims Act." *Id.* at 58 (*citing Johnson, supra,* 69 Cal.2d 782; *Wheeler v. County of San Bernardino* (1978) 76 Cal.App.3d 841.) The ministerial inability to de-energize the powerlines during a Red Flag Warning with sustained winds exceeding 60 mph violates basic safety standards and constitutes ministerial negligence.

4. Emergency Services Act Immunity is Inapplicable Here

LADWP should be estopped from asserting that it is covered by emergency response immunity under the California Emergency Services Act ("CESA"), Cal. Gov. Code § 8655. (Demurrer at 22.) Judicial estoppel applies when "(1) the same party has taken two positions; (2) the positions were taken in judicial . . . proceedings; (3) the party was successful in asserting the first position . . . ; (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." *Jackson v. County of Los Angeles*, 60 Cal. App. 4th 171, 183 (1997). Although the City now claims CESA (and its immunity) apply to it, the City

[7] LADWP argues that the duty to block the reclosers was not triggered by the Wildfire Mitigation Plan because the Pacific Palisades was in a Tier 2 zone instead of a Tier 3 zone and attaches an unintelligible map in support of same that is inapposite to multiple other CPUC maps that identify the Pacific Palisades area as a "Very High Fire Hazard Severity Zone". This argument not only improperly addresses allegations outside the 4 corners of Plaintiff's complaint, it is a question of fact as to whether or not the areas at issue were in a Tier 2 or Tier 3 zone which would have mandated the blocking of the reclosers by LADWP. Furthermore, LADWP's argument conspicuously omits its additional duty under the Wildfire Mitigation Plan re Tier 2 zones which states that, "the blocking specific reclosers within Tier 2 will be determined on a condition or incident-based basis." Here, Plaintiffs have clearly alleged that the circumstances in the Pacific Palisades on the morning of January 7, 2025 prove that LADWP negligently failed to complete its ministerial task of blocking the subject reclosers.

took the exact opposite position in a recent case to avoid CESA's procedural obligations. The City's same counsel of record successfully demurred to a complaint by arguing that, with one exception not applicable here, CESA "does not purport to apply, much less govern, charter cities, like the City of Los Angeles." (RJN Ex. A, at 5.) The trial court sustained the demurrer on that basis. (*See* RJN, Ex. B, at 5.) This position was no mistake. In the pending appeal of that case, the City reiterated, "*Only one* provision of CESA plainly applies to charter cities," referring to section 8635.[8] (RJN Ex. C, at 34 (emphasis added); RJN Ex. A, at 9 (same).) The City's repeated representation that CESA does not apply to charter cities like Los Angeles—with the sole exception of section 8635—is totally inconsistent with its assertion that it is immune from the claims in this case pursuant to section 8655 of CESA. The City should be estopped from arguing it is protected by emergency response immunity in this proceeding.

Even if CESA did apply to charter cities, it would offer no immunity here. CESA immunity does not extend to *pre-existing acts or conditions* that created or exacerbated the emergency; liability remains where the dangerous condition was created by the entity's own negligence outside of the context of "carrying out the provisions of" CESA. (Gov. Code, § 8655.) Here, the Master Complaint pleads acts and conditions that *pre-exist* the emergency. Thus, none of the pled acts were 'carried out' pursuant to a state of emergency or for the provisions of Government Code section 8655. Accordingly, CESA immunity does not apply here.

Rather, Plaintiffs plead that LADWP's conduct – the failure to de-energize lines during forecasted extreme weather conditions – preceded the emergency *and* ultimately led to the emergency. The failures were, in turn, caused in part by LADWP's negligent failure to maintain its own equipment, which is totally separate from duties and operations carried out under CESA. Emergency immunity cannot shield liability for conduct—not pursuant to CESA—that *creates* the emergency.

Furthermore, Plaintiffs' allege that LADWP's own Wildfire Mitigation Plan establishes

[8] Section 8635 provides that charter cities may amend their charters for the preservation and continuation of government during a state of war.

specific protocols for de-energization. (MC ¶¶ 208-029, 228-231, 427).[9] The failure to follow these protocols constitutes ministerial negligence, not protected emergency decision-making. *See Adkins v.* State (1996) 50 Cal.App.4th 1802, 1816-17 (explaining that a mandatory ministerial duty is not subject to Emergency Services Act immunity because, in that case, "no decision[-]making is required").) Here, similarly, LADWP was required and had decided to deenergize lines before a fire event. No additional emergency decision-making was required. Thus, the CESA does not immunize LADWP under these circumstances.

For these reasons, those cases cited by LADWP are inapplicable. In *Thousands Trails . v. California Reclamation Dist. No. 17* (2004) 124 Cal.App.4th 450, the plaintiff sued regarding the discretionary actions taken during an already existing emergency. *Id.* at 459-61 ("During a declared state of emergency, District 17's trustees, in an effort to prevent massive flooding, cut a District 2096 levee….[and] [t]he Act recognizes the split-second decision-making necessitated by an unfolding emergency."). In *Labadie v. State of California* (1989) 208 Cal.App.3d 1366, plaintiff brought suit for negligent misrepresentation about the spraying of pesticides, which was a discretionary act, during a declared state of emergency related to bugs. *Id* at 1368-69. Here, by contrast, the Plaintiffs' dangerous condition and nuisance causes of action are based upon facts that existed before the Palisades Fire and relate to the failure to complete mandatory actions.

5. The Master Complaint States a Tort Claim Related to DS-29

Citing only paragraphs 221-24 of the Master Complaint, Defendants argue that Plaintiffs fail to state a claim with respect to DS-29 because they "fail to allege, as they must under Government Code section 835, that a 'negligent or wrongful act omission' by an LADWP employee created the dangerous condition of the cord, or that LADWP had advance 'notice' of the condition and failed to cure it." (Demurrer 25.)

Plaintiffs agree that Government Code section 835 requires them to allege either a "negligent or wrongful act omission" or that LADWP had actual or constructive knowledge of the

[9] Despite purportedly treating plaintiffs' claims as true for purposes of the demurrer, Defendants attempt to argue facts related to the recloser claims and the Wildfire Mitigation Plan – an argument that exceeds the scope of a demurrer. (Demurrer 10, 23).

condition. And in fact, Plaintiffs have alleged both.

The Master Complaint, in portions that Defendants do not cite, allege those foundational components of the dangerous condition claim for DS-29: "a negligent act or omission by an employee of LADWP within the scope of his/her employment created the dangerous condition[]" at DS-29 and that "LADWP and its employees had actual and constructive knowledge of the dangerous conditions." (MC ¶ 430.) The "dangerous condition" of "LADWP's wood utility poles, overhead powerlines, and transformers" caused "unsuccessful attempt to de-energize DS-29 circuits." (MC ¶ 427.)

Thus, Plaintiffs plead negligence and notice under Government Code section 835.

C. The Master Complaint Pleads Causation, Allegations Which Must be Assumed True on Demurrer

It is transparently absurd for Defendants to assert that Plaintiffs have not alleged sufficient causation. Plaintiffs adequately allege that LADWP's failed water system and power equipment were each a substantial cause of plaintiffs' damages. Liability requires "some element of physical, but-for causation" linking the public improvement to the damage, even if "only one of several concurrent causes." *Oroville*, 7 Cal. 5th at 1108. And the failed infrastructure need not be the initial spark in the causal chain. See *Belair*, 47 Cal. 3d at 560.

Plaintiffs satisfy the pleading standard here. As to the water claims, they have alleged how, for example, "the reservoirs, storage tanks and the pump stations that supply them could not keep pace with the demand placed on the water supply, including the fire hydrants, and were a substantial cause of the uncontrolled spread of the Palisades Fire." (MC ¶ 136.) Plaintiffs also allege but-for causation. (*E.g., id.* ¶ 157 ("[D]espite the scope and scale of the Palisades Fire, where water was available to firefighters, they were able to save structures.").) Given the extreme fire hazard in the region (*id.* ¶¶ 48-61), the destruction from the fire was, tragically, "the inescapable or unavoidable consequence," *Oroville*, 7 Cal. 5th at 1108, of "leaving firefighters with only 2.5% of the Palisades' total water supply to fight the fire" (MC ¶ 156). (*See, e.g.*, *id.* ¶¶ 153, 193.) Governor Gavin Newsom himself drew the causal link: he called the shutdown of the Santa Ynez Reservoir "deeply troubling," "acknowledged that the loss of water pressure

'likely impaired' the ability of firefighters to protect homes," and ordered an independent investigation. (*Id.* ¶ 188.) Plaintiffs also alleged that "the damage to Plaintiffs' properties was **proximately and substantially caused by**" the litany of relevant aspects of Defendants' deliberate design and maintenance, and the like, in relation to the water system. (*Id.* ¶ 421 (emphasis added).)

Plaintiffs allege system failures at critical junctures—from the fire's early stages when containment was possible (*see, e.g.*, *id.* ¶¶ 95, 185, 198-204), to ongoing hydrant failures throughout affected neighborhoods (*see, e.g., id.* ¶¶ 85-129, 139, 146-50). Early manifestations of the system's failures—for example, helicopters being limited in their water drops and fire hydrants running dry—provide a causal link to *all* plaintiffs' damages. And LADWP's factual protestations and appellations to concurrent causes are irrelevant at this stage. (Demurrer 27-28); *Shehyn v. Ventura Cnty. Pub. Works Agency* (2025)108 Cal. App. 5th 1254, 1260 (reversing order sustaining demurrer on inverse condemnation claim and observing that the importance of a concurrent cause "goes to the merits of the claim, not its viability at the pleading stage").[10]

As to Plaintiffs' power claims, the complaint unmistakably alleges that LADWP's energized power lines were a cause of plaintiffs' damages at paragraphs 234 – 236. Then in the power causes of action, Plaintiffs allege causation. (MC ¶¶ 413, 428, 431, 436, 442). The same is true for the vacant lots causes of action. (*id.* ¶¶ 449, 456-58, 460).

In this demurrer context, all of the allegations must be taken as true. Here, Defendants inappropriately challenge Plaintiffs' ability to prove the allegations. A demurrer is not appropriate to challenge plaintiffs' "proof" as inadequate. In fact, the court must assume the truth of all factual allegations when ruling on a demurrer: not only that plaintiffs' allegations can be proven, but that they are indeed true. The demurrer process is not intended to resolve factual questions or weigh evidence. *Blank v. Kirwan* (1985) 39 Cal.3d 311, *Evans v. City of Berkeley*

[10] LADWP's reliance on *Christensen v. Superior Court*, (1991) 54 Cal. 3d 868, 900-01, is misplaced. That case recognized that allegations can give rise to an "inference of causation," and a mass tort complaint could omit specific details about how the defendant's conduct caused each plaintiff's harm at the pleading stage. *Id.* at 901.

(2006) 38 Cal.4th 1, *Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, *Quelimane Co. v. Stewart Title Guaranty Co*. (1998) 19 Cal.4th 26, *Gonzales v. State of California* (2018) 29 Cal.App.5th 453.

The purpose of a complaint, especially a "low number" or "master" complaint in a mass tort action such as this, is to provide notice of the claims being asserted, not to prove the facts underlying those claims. Factual disputes are obviously premature at the demurrer stage and are properly addressed during the discovery process.

Defendants' argument about but-for causation regarding each plaintiff's lack of water, secondary ignition, or every individual spot fire, raise factual issues that cannot be resolved at the pleading stage. Plaintiffs have adequately alleged that LADWP's systems and equipment caused them injuries that are special and peculiar and so the objection must be overruled. As recognized in *Christensen v. Superior Court* (1991) 54 Cal. 3d 868, allegations can give rise to an "inference of causation," and it is permissible for a mass tort complaint to specific details about how the defendants' conduct caused each plaintiff's harm at the pleading stage. *Id.* at 900-901.

Plaintiffs allege injuries and damages that are special and peculiar from the entire course of the Palisades Fire and so are entitled to claim damages regardless of whether a particular missed helicopter drop, dry hydrant, or spot fire burned their particular property. *Birke v. Oakwood Worldwide* (2009) 1540, 1551 (citing *Arcadia, California, Ltd. V. Herbert* (1960) 54 Cal.2d 328, 337); (MC ¶¶ 2, 9-10, 235-236, 242-243, 246, 380, 382-389.)

The fire progression story map, including the homes that were destroyed at various times and from various fire conditions, will need to be developed over the months ahead. Fire progression and how and when each plaintiff's properties were damaged are questions of fact in this case that cannot and should not be tested on Demurrer to the Master Complaint. Further, this is a Master Complaint for a mass action, which requires a more inclusive paradigm than might otherwise be the case for a stand-alone complaint. Here, where there are more than 10,000 claimants, has the Master Complaint has sufficiently pled sufficient facts to state claims, including causation? The answer is unequivocally yes.

D. The Demurrer Should Be Denied as to the Vacant Lot Claims

Defendants' arguments fail here: Government Code §§ 831.2, 850, 850.2, and 850.4 do not provide immunity for liability for the City's unkept and abandoned lots. Plaintiffs' claims do not arise from the "natural condition of unimproved property" or from discretionary fire-protection services. Rather, Plaintiffs' claims arise from the City creating and maintaining a dangerous condition to exist on property it owns and manages, which includes its failure to follow its own mandatory brush clearance municipal ordinances. (MC ¶¶ 269-283.)

Defendants rely upon *Cochran v. Herzog Engraving Co*. (1984) 155 Cal.App.3d 405, which is factually and legally inapt. *Cochran* concerned negligence claims against a fire department for advice about combustible magnesium on private property. *Id.* at 408, 410. In contrast, here, the vacant lots were publicly owned and managed. California governmental immunity statutes, including government code sections 850 et seq., "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. Government Code § 835 codifies the State's "duty not to maintain public premises in a dangerous condition." *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1133.

As to natural condition immunity (Gov. Code § 831.2), California law distinguishes natural and artificially created or maintained conditions. These lots were not in natural condition. The City cannot invoke "natural condition" immunity to excuse its own statutory violations for failure to clear brush that was required to be maintained but was not – thereby making the brush on the vacant lots artificially created and maintained by human conduct (the City). Once a public entity undertakes brush clearance obligations or otherwise alters the land, the condition ceases to be "natural." *See Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 832 (immunity applies only to "natural" conditions, not those created or maintained by human conduct.) The Los Angeles City Municipal Code § 57.4906.5 requires the City to engage in brush clearance of its lots in residential areas. *Alana M v. State of California* (2016) 245 Cal.App.4th 1482, which the

City relies upon, is not applicable as it concerned a government entity's failure to provide discretionary protective services from latent natural conditions of a cliff. Here, the brush clearance was not discretionary, and the abandoned lots were not in latent natural condition.

III. CONCLUSION

The City and LADWP cannot escape liability for their role in causing the damages in the Palisades Fire. LADWP's public water system, designed for the exact purpose of providing water during a fire, failed to operate as designed and maintained, and resulted in catastrophic loss. The ministerial mistakes as to the LADWP electrical system, old and antiquated, with mismanaged maintenance on a ministerial level to the point where LADWP did not even know what was or was not energized, are not immune. The failings of LADWP's systems are alleged to have been a substantial factor in causing Plaintiffs' damages. Inverse condemnation must be allowed for Palisades Fire victims to pursue just compensation and spread the burden of their horrific losses over the greater public for whose benefit LADWP's cost cutting decisions were made. For these and all the foregoing reasons, Plaintiffs respectfully request the Demurrer be overruled.

Dated: December 18, 2025

ROBERTSON & ASSOCIATES, LLP

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

Dated: December 18, 2025

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

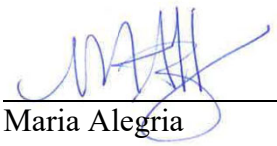
At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 24025 Park Sorrento, Suite 100-1, Calabasas, California 91302

On December 18, 2025, I served true copies of the following document(s) described as **INDIVIDUAL PLAINTIFFS' OPPOSITION TO DEMURRER BY DEFENDANTS CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER AND CITY OF LOS ANGELES** on the interested parties in this action as follows:

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

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

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



Maria Alegria