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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

DAN GRIGSBY et al.,

Plaintiff,

vs.

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

Case No. 25STCV00832

[Exempt from filing fees under Government Code section 6103]

NOTICE OF DEMURRER AND DEMURRER BY DEFENDANTS CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER AND CITY OF LOS ANGELES; MEMORANDUM OF POINTS AND AUTHORITIES

[*Filed concurrently with Declaration of Daniel B. Levin; Request for Judicial Notice; and [Proposed] Order*]

Hon. Samantha Jessner
Department 7

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

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.

AND ALL RELATED CASES

TO THE COURT AND PLAINTIFFS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on February 5, 2026 at 1:45 p.m., or as soon thereafter as the matter may be heard, in Department 7 of the above-entitled Court located at 312 North Spring Street Los Angeles, CA 90012, Defendants City of Los Angeles and City of Los Angeles, acting by and through the Los Angeles Department of Water and Power (together, the "City"), will and hereby do demur to the Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth causes of action in the Master Complaint.

This Demurrer will be based upon this Notice of Demurrer and Demurrer, the Declaration of Daniel B. Levin, the Memorandum of Points and Authorities and Request for Judicial Notice submitted concurrently herewith, the pleadings and records on file in this action, any further submissions in support of the Demurrer, and any further evidence and argument the Court may receive at or before the hearing.

DATED: November 13, 2025

MUNGER, TOLLES & OLSON LLP

By: /s/ *Daniel B. Levin*
DANIEL B. LEVIN
Attorneys for Defendants City of Los Angeles and City of Los Angeles Acting By and Through the Los Angeles Department of Water and Power

DEMURRER

Defendants City of Los Angeles and City of Los Angeles, acting by and through the Los Angeles Department of Water and Power (together, the "City"), hereby demur to the following causes of action in the Master Complaint on the following grounds:

1. Fifth Cause of Action: The claim for "Inverse Condemnation (Powerlines)" does not state facts sufficient to constitute a cause of action against the City. (Code Civ. Proc., § 430.10, subd. (e).)

2. Sixth Cause of Action: The claim for "Inverse Condemnation (Water Supply System)" does not state facts sufficient to constitute a cause of action against the City. (Code Civ. Proc., § 430.10, subd. (e).)

3. Seventh Cause of Action: The claim for "Dangerous Condition of Public Property (Powerlines)" does not state facts sufficient to constitute a cause of action against the City. (Code Civ. Proc., § 430.10, subd. (e).)

4. Eighth Cause of Action: The claim for "Public Nuisance (Powerlines)" does not state facts sufficient to constitute a cause of action against the City. (Code Civ. Proc. § 430.10, subd. (e).)

5. Ninth Cause of Action: The claim for "Dangerous Condition of Public Property" does not state facts sufficient to constitute a cause of action against the City. (Code Civ. Proc., § 430.10, subd. (e).)

6. Tenth Cause of Action: The claim for "Public Nuisance" does not state facts sufficient to constitute a cause of action against the City. (Code Civ. Proc., § 430.10, subd. (e).)

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I. INTRODUCTION

The Palisades Fire was a historic tragedy. But the City did not start the fire, and it is not legally responsible for the damage it caused. Each theory Plaintiffs allege against the City fails as a matter of law.

Water: The City is not liable in inverse condemnation on the theory that insufficient water was available to fight the fire. The California Supreme Court has held that nothing in the state Constitution or statute creates a duty to deliver water and "no action in tort for failure to have a supply of water at the premise of a consumer in a city or town for the extinguishment of fire, or for any other purpose, is given under any statute or rule of law in this state." (*Niehaus Bros. Co. v. Contra Costa Water Co.* (1911) 159 Cal. 305, 312-313.) Plaintiffs cannot avoid that black-letter law by pleading an inverse condemnation claim. A taking occurs when a public improvement itself creates a risk of damage to adjacent property, and that risk materializes and causes property damage. The water system did not create the risk of a fire igniting, and permitting an inverse claim would contradict a hundred years of precedent barring fire claims against water utilities.

Spot Fires: The City is not liable on the theory that energized power lines ignited spot fires after the Palisades Fire had already spread widely. Because of the statutory immunities for discretionary and emergency decision-making, Plaintiffs cannot bring tort claims challenging the City's decisions whether and when to de-energize power lines or to replace electrical equipment. (See Gov. Code, §§ 820.2, 8655.)

Brush Clearance: Public entities are immune from claims of dangerous conditions on unimproved land. Plaintiffs cannot avoid this immunity by alleging the Los Angeles Fire Department failed to clear brush adequately from City-owned lots. The Legislature created broad fire protection immunities that preclude such claims. (See Gov. Code, §§ 850, 850.2, 850.4.)

The fire upended thousands of Angelenos' lives, and the City has been working hard to support those affected. But no legal doctrine makes Los Angeles taxpayers the insurers of last resort for massive losses for a fire that the City did not cause. The Court should dismiss the Master Complaint's claims against the City.

II. PLAINTIFFS' ALLEGATIONS[1]

Around 10:30 a.m. on January 7, 2025, a fire ignited in Topanga State Park above the Pacific Palisades. (MC ¶¶ 1, 366.) "[P]ushed by strong Santa Ana winds," "low relative humidity and critical live fuel moisture levels," (*id.* ¶ 242), the fire "spread rapidly down canyon and into heavily populated neighborhoods incinerating everything in its path." (*Id.* ¶ 241.)

Plaintiffs do not allege the City is responsible for igniting the Palisades Fire. Federal prosecutors have charged a private individual with willfully starting the fire. (MC ¶ 75.)

Plaintiffs instead allege that the City and 15 other public or private entities contributed to or failed to control the fire's spread. Plaintiffs allege that the City did not deliver enough water to fight the fire. The City's urban hydrant system was "not designed to fight wildfires" (MC ¶¶ 191, 193), and "the storage tanks that hold water for high-elevation areas like the Highlands, and the pumping systems that feed them, could not keep pace with the demand as the fire raced from one neighborhood to another."[2]

Plaintiffs assert the City's water system had various deficiencies: that certain fire hydrants in the Palisades had not been serviced; that some hydrants had "outdated" 2.5 inch outlets instead of 4 inch outlets (MC ¶¶ 146-147); that the trunk line that supplies water to the Palisades was "outdated" (*id.* ¶ 149); and that two water reservoirs were offline at the time of the fire (*id.* ¶¶ 158-197). The Santa Ynez Reservoir was offline because the City was in the process of repairing a tear in the reservoir cover that protected drinking water from contamination (*id*. ¶ 187), and "[w]ater quality regulations required the reservoir to be emptied."[3] The Palisades Reservoir, a

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[1] The City disputes certain allegations in the Master Complaint ("MC") and treats them as true only for purposes of this demurrer. (See *Fox v. JAMDAT Mobile, Inc.* (2010) 185 Cal.App.4th 1068, 1070 fn. 1, 1078.)

[2] Tim Arango et al., *'Completely Dry': How Los Angeles Firefighters Ran Out of Water*, N.Y. Times (Jan. 9, 2025), *available at:* https://www.nytimes.com/2025/01/09/us/los-angeles-fire-water-hydrant-failure.html (cited at MC ¶ 192).

[3] Matt Hamilton & Ian James, *Inside L.A.'s desperate battle for water as the Palisades fire exploded*, L.A. Times (Jan. 16, 2025), *available at:* https://www.latimes.com/california/story/2025-01-16/inside-the-dwps-losing-battle-to-keep-water-flowing-as-the-palisades-fire-exploded (cited at MC ¶ 134 fn. 15).

smaller reservoir that had been "out of service since July 2013," remained offline after efforts in 2024 to explore its return to service found the reservoir's "roof unsafe." (*Id*. ¶ 174.) Plaintiffs allege that these reservoirs' unavailability caused fire hydrants to run dry. (*Id.* ¶ 185.) But they contend that the first water tank to run out of water did so at 4:45 p.m. (*id*. ¶ 137), hours after the Complaint alleges the fire had spread all the way down to the sea.[4]

Plaintiffs have two other liability theories. First, they allege that, after the fire began, City-owned power equipment sparked, leading to spot fires. (MC ¶¶ 205-240.) Second, they claim that LAFD did not clear brush from six vacant lots in the Castellammare neighborhood, two miles downwind of where the fire began. Plaintiffs contend that embers from the Palisades Fire landed on the vacant lots, sparking a spot fire. (*Id.* ¶¶ 269-280.)

The Master Complaint pleads 54 causes of action against 16 defendants. Six of those claims name the City: inverse condemnation based on the alleged failure to provide sufficient water (MC ¶¶ 417-424); inverse condemnation, dangerous condition of public property, and public nuisance based on their spot fire theory (*id.* ¶¶ 409-416, 425-444); and dangerous condition and public nuisance tort claims based on their failure-to-clear-brush theory. (*Id.* ¶¶ 445-462.)

III. LEGAL STANDARD

A demurrer is properly sustained where "[t]he pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc., § 430.10, subd. (e).) For Plaintiffs' tort claims, "every fact material to the existence of [the City's] statutory liability must be pleaded with particularity." (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.) In deciding demurrers, courts "accept as true all material facts properly pleaded in the complaint, but do not assume the truth of contentions, deductions, or conclusions of fact and law." (*Today's IV, Inc. v. L.A. County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1165.) "Doubt in the complaint may be resolved against plaintiff and facts not alleged are presumed not

[4] See MC ¶ 90 ("by 11:24 a.m. [on January 7], flames had engulfed both sides of Palisades Drive"); *id.* ¶ 109 (map of fire progression); *id.* ¶ 265 (by "late morning and early afternoon" the fire was already on the Getty Villa property); *id*. ¶¶ 274-280 (between 1:20 p.m. and 3:38 p.m., embers from the fire started a spot fire in the Castellammare neighborhood).

to exist." (*Kramer v. Intuit Inc.* (2004) 121 Cal.App.4th 574, 578.)[5]

IV. ARGUMENT

A. The Water Claim Fails

Plaintiffs cannot state a claim for inverse condemnation based on a water utility's alleged failure to provide enough water to extinguish a fire. (See MC ¶¶ 149, 153.) An unbroken line of precedent dating back more than a century holds that a water utility has no legal duty under the Constitution or statute to provide sufficient water for firefighting and is not liable for failing to do so. Yet Plaintiffs now urge the Court to find that this precedent is irrelevant because, they claim, the lack of water to fight a fire amounts to a constitutional taking. No precedent supports this novel theory, and both history and public policy weigh against massively expanding takings liability to make water utilities responsible for damages inflicted by a fire.

1. Cities Cannot Be Liable For Failing To Provide Water for Firefighting

The Supreme Court held more than 100 years ago that no "statute or rule of law" imposes a duty on a water utility to supply sufficient water for firefighting. (*Town of Ukiah City v. Ukiah Water & Imp. Co.* (1904) 142 Cal. 173, 175.) Canvassing other jurisdictions, the Court concluded that, absent an express contract, a "city is *not liable* to its citizens whose property is destroyed by fire, for failure to provide an adequate supply." (*Id*. at pp. 177-178, italics added.)

Niehaus Brothers Co. v. Contra Costa Water Co. (1911) 159 Cal. 305, 312, reaffirmed the no-liability rule, holding that "there is *nothing in the constitutional provisions of this state* impressing the distribution of appropriated water with a public use" or in any state statute "which imposes upon a water company any obligation to furnish to the municipality, or its inhabitants, any specified quantity of water, or water for any particular purpose." (*Ibid*., italics added.)

[5] This Court may "rely on and accept as true the contents of the exhibits" attached to a complaint. (*Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505.) The same rule applies to articles cited, relied on, and only *partially* quoted by plaintiffs. Consideration of such documents "prevents plaintiffs from selecting only portions of documents that support their claims, while omitting portions of those very documents that weaken—or doom—their claims." (*Khoja v. Orexigen Therapeutics, Inc.* (9th Cir. 2018) 899 F.3d 988, 1002.)

The Supreme Court, since *Niehaus and Ukiah*, has twice reaffirmed the rule that water utilities have no duty to provide water for firefighting and cannot be held liable for failing to prevent fire damage. (See *Stang v. City of Mill Val.* (1952) 38 Cal.2d 486, 487-488; *Heieck and Moran v. City of Modesto* (1966) 64 Cal.2d 229, 230-231.) And appellate courts have likewise relied on the rule. (See *Luis v. Orcutt Town Water Co.* (1962) 204 Cal.App.2d 433, 438; *Stuart v. Crestview Mut. Water Co.* (1973) 34 Cal.App.3d 802, 806; *White v. Southern Cal. Edison Co.* (1994) 25 Cal.App.4th 442, 449.)

Niehaus found no support in the Constitution for a claim against a water utility and held that municipal liability for fire damage "can *only* arise" under a contract where the utility has undertaken a specific obligation to provide water for firefighting. (*Niehaus*, *supra*, 159 Cal. at p. 313, italics added.) That holding leaves no room for a constitutional inverse condemnation claim.

2. There Is No Taking Where the Public Improvement Did Not Create the Danger to Private Property

Even if *Niehaus* had left open some room for a constitutional takings claim based on a failure to supply water for firefighting, no takings claim could arise under current California law.

"[T]he 'just compensation' clause [in California's Constitution] is concerned, most directly, with the state's exercise of its traditional eminent domain power." (*Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 376.) The Supreme Court recognizes a claim for "inverse condemnation" under the takings clause, California Constitution, article I, section 19, only when property owners suffer damage that "arise[s] from the inherent dangers of the public improvement as deliberately designed, constructed, or maintained" and "the injury to private property is an 'inescapable or unavoidable consequence' of the public improvement." (*City of Oroville v. Super. Ct.* (2019) 7 Cal.5th 1091, 1106, 1108.) This limitation "operates as a preventive measure to ensure that not all private property damage bearing some causal relationship to a public improvement results in liability." (*Id.* at p. 1106.)

These requirements mean the public improvement must itself *create* the danger to adjacent property that causes the damage. (See *City of Oroville*, *supra*, 7 Cal.5th at pp. 1102, 1108.) That risk must arise from "affirmative actions" the government took "to further some public project."

(*Wildensten v. East Bay Regional Park Dist.* (1991) 231 Cal.App.3d 976, 980.) For example, in *Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 254, 263, the county excavated to build a road. The excavation inherently created the risk of triggering a landslide, and when that landslide occurred, the county was liable for the damage. In *Holtz v. Superior Court* (1970) 3 Cal.3d 296, 299, 311, the city built a new subway tunnel. The tunneling created the risk of instability of adjacent land. When that risk materialized and adjacent property was damaged, the city faced a takings claim. In *Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 289, 299, the city built a new sewage plant, creating the risk that noxious odors would drift onto adjacent properties. When that happened, the city faced a viable takings claim. These cases illustrate the rule: the public improvement must create the risk of damage to adjacent land to be a compensable taking.

The government does not effect a taking by failing to mitigate *existing* risks. For example, in *Wildensten*, *supra*, 231 Cal.App.3d 976, the court held that a park district was not liable for a taking where it failed to take steps to mitigate landslide risk on its land because there was "no duty on the part of the District to correct all naturally occurring landslide conditions on its property that threaten adjoining property." (*Id*. at p. 981 [sustaining demurrer without leave to amend].) Similarly, in *Paterno v. State of California* (1999) 74 Cal.App.4th 68, the court held that the state did not take property by failing to increase the capacity of a levee system in light of increasing flood risks, because it had no duty to provide "any level of flood protection" in the first place, and imposing liability for failing to protect the plaintiff from floodwaters would be "an unwarranted usurpation of power for a judge." (*Id.* at pp. 96-97.)

Plaintiffs fail to state a valid takings claim. They do not, and cannot, allege that their fire damages were the "inescapable or unavoidable consequence" of the water system's "inherent risks." (*City of Oroville*, *supra*, 7 Cal.5th at p. 1108.) A public water system may have certain inherent risks—for example, a pipe could burst and flood adjacent property—but building and maintaining a water system does not create an inherent risk of wildfire. Because California law does not recognize an inverse condemnation claim for the failure of a public improvement to prevent damage from outside risks, the City's decision to build and maintain a water system does not give rise to a takings claim if that system fails to provide enough water for firefighting. Just as

the park district in *Wildensten* had no duty to improve land to protect adjacent property from existing landslide conditions and the state had no duty to protect against rising flood risks in *Paterno*, the City had "no duty to a person, whose property is destroyed by fire, to supply water for the extinguishment of the fire." (*White, supra*, 25 Cal.App.4th at p. 449.)

The California Supreme Court has recognized one narrow exception to the bedrock rule that a taking occurs only when the public improvement creates the risk that causes the damage. A special doctrine permits liability in some instances when flood control projects, like dams or levees, "fail[] to function as intended," resulting in flooding. (*City of Oroville*, *supra*, 7 Cal.5th at pp. 1108-1109.) That rule "addresse[s] the unique problems of flood control litigation," and the Supreme Court has held that it does not apply in other contexts. (*Id*. at pp. 1103, 1108-1110 & fn. 3, disapproving *Cal. State Automobile Assn. v. City of Palo Alto* (2006) 138 Cal.App.4th 474, 476-477, 483 [applying failed-to-function-as-intended rule outside flood control context]; see also *Bunch v. Coachella Valley Water Dist.* (1997) 15 Cal.4th 432, 442, 449 [liability rule devised for "unique problems flood control litigation" and applies to "cases involving flood control improvements"].) Because the Supreme Court has repeatedly said that the flood control cases are unique, there is no basis for applying them to override the Court's clear statement in *Niehaus* that the Constitution does not recognize any legal duty for water utilities to provide water to fight fires.

3. No Precedent Supports Plaintiffs' Failure-To-Prevent-Damage Takings Theory

The City is not aware of a single published decision—in California or anywhere else—recognizing an inverse condemnation claim based on a failure to supply sufficient water to prevent fire damages. During a status conference, Plaintiffs referenced one unpublished and uncitable trial court decision assigning takings liability to the Yorba Linda Water District for fire damage. (See R.T. at 15:15-16:5 (Apr. 23, 2025).) But that nonprecedential case does not address, and is irreconcilable with, *Niehaus*, which holds that nothing in the California Constitution imposes a duty to provide water for firefighting and that a utility can only be liable for failing to supply water for firefighting if the utility entered into a contract to do so . (See *Niehaus, supra*, 159 Cal. at pp. 312, 316.)

And at least one published decision outside California has rejected a takings claim against a city based on lack of water to fight a fire. (*Travelers Excess & Surplus Lines Co. v. City of Atlanta* (Ga. App. 2009) 677 S.E.2d 388, 389-390.) In *Travelers*, an insurer sued Atlanta for negligence and inverse condemnation, alleging that inoperable hydrants caused fire damage. The Georgia court affirmed dismissal of both claims, explaining: "there [was] no logical reason, based on public policy or otherwise, for treating" the barred tort claim and takings claim "differently," and that "[a]ny other rule would be contrary to sound public policy because it would potentially open the floodgates of litigation and would risk the 'utter insolvency' of municipalities." (*Ibid*.)

4. History and Public Policy Weigh Against Recognizing Plaintiffs' Claim

Where novel takings claims are raised, California courts look to history and public policy to decide whether to expand takings law. (See *Customer Co.*, *supra*, 10 Cal.4th at pp. 379-380.) Neither supports liability here.

History. The history of California's takings clause and of judicial decisions consistently rejecting a duty to supply water for firefighting strongly counsel against recognizing Plaintiffs' inverse condemnation water claim.

The takings clause originally applied only when private property was "taken for public use"—meaning seized for a public improvement. (*Customer Co.*, *supra*, 10 Cal.4th at p. 378 [quoting Cal. Const. of 1849, art. I, § 8].) The constitutional convention of 1879 amended the clause to apply when private property was "taken *or damaged* for public use." (*Id*. at p. 376, italics added.) The Supreme Court has held "that the addition of the words 'or damaged' . . . was intended to clarify that application of the just compensation provision is not limited to physical invasions of property . . . but also encompasses special and direct damage to adjacent property resulting from the construction of public improvements." (*Id*. at pp. 379-380.) The amendment's proponents indicated that it would, for example, compensate a homeowner who could not access their house because a street was lowered for a public improvement. (*Id*. at p. 379.) Even as amended, there is "nothing that indicates the provision was intended to expand compensation outside the traditional realm of eminent domain." (*Id*. at pp. 376, 380.)

There is no indication that the amendment's extension of takings liability to "special and direct damage to adjacent property" was intended to reject the then-well-settled principle of American municipal law that cities had no duty to provide water for fire protection and were not liable to property owners for failing to do so. (J. Dillon, Treatise on the Law of Municipal Corporations § 774 (1872) ["Nor is [a municipal] corporation liable to the owner of property destroyed or damaged by fire, in consequence of its neglect to provide suitable engines or fire apparatus, or to provide and keep in repair public cisterns."], italics omitted.)

Before 1879, multiple state courts had held that cities were not liable for failing to supply water for firefighting, observing the lack of authority supporting such liability. (See *Patch v. City of Covington* (Ky. App. 1857) 17 B.Mon. 722, 732-733; *Brinkmeyer v. City of Evansville* (1867) 29 Ind. 187, 191-195; *Wheeler v. City of Cincinnati* (1869) 19 Ohio St. 19, 21-22; *Grant v. Erie* (1871) 69 Pa. 420, 422-424; *Tainter v. City of Worcester* (1877) 123 Mass. 311, 316-317.) Courts in the late 1800s found the idea that such liabilities could be imposed on utilities "startling." (See *Springfield Fire & Marine Ins. Co. v. Village of Keeseville* (1895) 148 N.Y. 46, 52; *Foster v. Lookout Water Co.* (1879) 71 Tenn. 42, 49.) As one explained, this liability "would be highly disastrous to municipal governments" because "an extensive conflagration might bankrupt the municipality." (*Springfield Fire & Marine Ins. Co.*, *supra*, 148 N.Y. at p. 52.)

There is no evidence that the 1879 amendment's supporters intended to constitutionalize a "startling" theory of municipal liability that *no* court had endorsed, that jurists in at least five states had rejected, and that would have threatened to bankrupt California municipalities. The constitutional convention debate on the "or damages" amendment did not even refer to the widely accepted rule that municipalities have no duty to supply water for firefighting, much less dispute its merits or indicate an intent to depart from it via a constitutional amendment. (See 3 Debates & Proceedings, Cal. Const. Convention 1878-1879, p. 1190.) Under the no-hiding-elephants-in-mouseholes canon, California courts presume that the people do not make such "fundamental change[s] only by way of implication" in constitutional amendments. (*Cal. Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 260-261.)

Public Policy. California's common-law immunity for water utilities serves a critical public policy. As the Supreme Court recognized in *Niehaus*, water utilities charge publicly regulated rates, and "it would be impossible for the municipality to establish rates which would adequately meet the varied risks which the company might be required to assume" if it were liable for fire damage. (*Niehaus*, *supra*, 159 Cal. at p. 320.) Plaintiffs allege that LADWP provides water "to more than four million residents and business." (MC ¶ 13.) To insure all four million customers against fire damage while remaining solvent, LADWP would need to charge exorbitant rates, and ratepayers would unwillingly become insurers of others' private property. Worse, imposing novel liability for fire damage "might well frighten . . . municipal corporations from assuming the startling risk" of providing water at all. (*Foster*, *supra*, 71 Tenn. at p. 49.) That is why, when considering "the constitutional control which the state, through its municipalities takes in fixing the rates which may be charged for water," the Supreme Court held that "no liability" for fire damage "was ever contemplated." (*Niehaus*, *supra*, 159 Cal. at p. 316.)

Not only have our courts repeatedly affirmed the no-liability rule, the Legislature has also granted the utilities and the City broad *statutory* immunity for fire damage—further demonstrating the crucial public policy interests at stake. The Government Code shields public entities from all tort liability for failing "to provide fire protection service[s]" (Gov. Code, § 850); failing "to provide or maintain sufficient personnel, equipment or other fire protection facilities" (*id.* § 850.2); and "the condition of fire protection or firefighting equipment or facilities" (*id.* § 850.4). And Public Utility Code section 774 immunizes private water utilities from liability for "failure to provide or maintain an adequate water supply or pressure" for firefighting. (Pub. Util. Code § 774.) The legislature has thus vested "public officials" with exclusive authority to decide "whether fire protection should be provided at all, and, if so, to what extent," without "second-guess[ing] by judges or juries." (*Puskar v. City & County of S.F.* (2015) 239 Cal.App.4th 1248, 1256.) In practice, these "broad" immunities mean "public entities owe no duty to persons or property damaged by fire"—regardless of the public entity's "percentage of fault" (*People ex rel. Grijalva v. Super. Ct.* (2008) 159 Cal.App.4th 1072, 1078), regardless whether the allegedly tortious acts occurred before or during the fire (*Valley Title Co. v. San Jose Water Co.* (1997) 57

Cal.App.4th 1490, 1503-1504 & fn. 10), and regardless whether the acts were committed by "nonfirefighting City employees" (*New Hampshire Ins. Co. v. City of Madera* (1983) 144 Cal.App.3d 298, 305).

Allowing Plaintiffs to circumvent the common-law and statutory immunities by recasting a tort claim as a constitutional takings claim "would nullify all applicable governmental immunity statutes" and thereby undermine the Legislature's judgment that cities should not face lawsuits alleging inadequate fire protection. (*Customer Co.*, *supra*, 10 Cal.4th at pp. 378, 391, fn. 15.) Recognizing "a Constitution-based liability, *unamenable to legislative regulation*" would render the Legislature powerless to mitigate the adverse consequences of recognizing such liability. (*Id*. at p. 378.) It would mean that more than a century of precedent disallowing claims against water utilities for fire damage was all beside the point. And it would lead to anomalous results. While those who suffered personal injuries in a fire would obtain no relief because of the statutory fire protection immunities, those experiencing property losses could recover their losses along with the "unusually generous" remedies "available in inverse condemnation actions" (e.g., attorneys' fees). (*Id*. at p. 390.)

Accepting Plaintiffs' theory also would expose public entities to an onslaught of novel inverse condemnation claims on numerous fronts for not building or using public improvements to protect private property from threats that the government did not create. These considerations overwhelmingly counsel against accepting Plaintiffs' inverse condemnation theory.

5. The Reservoir Maintenance Allegations Do Not State a Takings Claim

Even if, contrary to all of the precedent above, failure of a water system to provide water for firefighting could amount to a constitutional taking, Plaintiffs' claim would still fail. Plaintiffs cite *City of Oroville* and allege that the City's maintenance of the Santa Ynez Reservoir led to the Reservoir being offline during the fire, which allegedly led to hydrants running dry. (MC ¶¶ 186, 420.) This theory does not state a claim under *Oroville*.

Although *Oroville* noted that a plaintiff can pursue an inverse claim for "damages that result from the inherent risks posed by the public entity's maintenance plan," only a deliberate plan to "forgo" maintenance can support such an inverse claim. (7 Cal.5th at p. 1107; *Mercury*

Casualty Co. v. City of Pasadena (2017) 14 Cal.App.5th 917, 930-931.) That is because it is the public entity's "policy choice" to forgo maintenance that gives rise to a corresponding duty to pay just compensation. (*City of Oroville*, *supra*, 7 Cal.5th at p. 1107.) By contrast, "the negligent operation of the improvement" does not result in a taking. (*Customer Co.*, *supra*, 10 Cal.4th at p. 382, italics omitted.)

Paterno illustrates the point. There, the plaintiff argued and a trial court found that a levee failed in a flood because the State of California did not verify that a district was "'continuously' patrolling the levee 'as required by federal law and State standards.'" (*Paterno*, *supra*, 74 Cal.App.4th at pp. 91, 93.) The Court of Appeal held that this did *not* support a takings claim because it was "a claim of the failure to implement a plan, not a claim of a bad plan" (*id*. at p. 93), and "it is the *plan* of maintenance which must be unreasonable to establish a taking" (*id.* at p. 87).

Plaintiffs here fail to allege a proper inverse claim based on a deliberate plan to forgo maintenance. Plaintiffs claim that "LADWP's Operations, Maintenance, and Monitoring Plan (OMMP) required" regular underwater inspections (MC ¶ 164), and that "LADWP violated its own OMMP" by conducting those inspections less regularly. (*Ibid*.) That is not a takings claim based on a plan to forgo maintenance. The premise of Plaintiffs' claim is that LADWP was maintaining the reservoir—the reservoir was drained in order to make repairs to the cover—but that LADWP's maintenance was deficient. It is a claim of "[p]oor *execution* of a maintenance plan," but such a claim "does not result in a taking." (*Paterno*, *supra*, 74 Cal.App.4th at p. 87.)

Plaintiffs' attempt to recast alleged departures from the maintenance plan as a series of "deliberate decisions" does not give rise to an inverse claim. (MC ¶ 185.) As explained in *Paterno*, "'deliberate' action invokes takings liability, where, and only where, the deliberation is *by a public entity*, not by an employee." (*Paterno*, *supra*, 74 Cal.App.4th at p. 88; see *City of Oroville*, *supra*, 7 Cal.5th at p. 1107 [explaining that liability arises from the "policy choice" to forgo maintenance].)

Plaintiffs' allegation that an LADWP employee had emailed about annual inspections not being performed and about staff wanting to seek approval to *change* the maintenance plan (MC ¶ 167) further confirms that they are asserting a theory of negligent performance of maintenance,

not a constitutionally deficient maintenance plan. "Even if [the official plan has] fallen into desuetude, the official plan [is] still the plan, until formally changed" by "the act of a political body in the exercise of its policymaking functions." (*Paterno*, *supra*, 74 Cal.App.4th at p. 94.) Plaintiffs do not allege that LADWP's board or any other political body changed the OMMP's official plan of annual inspections. And because they do not contend that official plan was unreasonable, they cannot maintain their inverse condemnation claim.

Finally, even if Plaintiffs had alleged some defective maintenance plan, it is not enough for Plaintiffs to allege "[a] causal connection between the public improvement and the property damage." (*City of Oroville*, *supra*, 7 Cal.5th at p. 1109.) Instead, "[a]t the core of the test [for an inverse claim] is the requirement that . . . the injury to private property" must be "an 'inescapable or unavoidable consequence' of the public improvement as planned and constructed." (*Id.* at p. 1108.) Because fire damage is not an "inescapable or unavoidable consequence" of the water system as deliberately constructed or maintained, Plaintiffs fail to allege a cognizable inverse claim.

B. The Power-Based Tort Claims Fail

1. Statutory Immunities Bar The Power-Based Tort Claims

Plaintiffs' power-based tort claims fail because statutory immunities bar tort claims against LADWP for its discretionary decisions whether to de-energize electrical circuits under the specific conditions present on January 6 and 7, 2025, and whether to replace electrical equipment.

Discretionary function immunity. Under Government Code section 820.2 a public entity like the City is not liable "for an injury resulting from [a public employee's] act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." (Gov. Code, § 820.2.)[6] "This 'discretionary act' immunity extends to 'basic' governmental policy decisions entrusted to broad official judgment." (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 976.) Discretionary function immunity applies to government

[6] The statute refers to liability of a "public employee," but "if the employee is immune under section 820.2, so also is the public entity." (*Sava v. Fuller* (1967) 249 Cal.App.2d 281, 284.)

decisions that require "personal deliberation, decision and judgment." (*Conway v. County of Tuolumne* (2014) 231 Cal.App.4th 1005, 1018.) The "purpose" of the immunity is "to assure that courts refuse to pass judgment on policy decisions in the province of coordinate branches of government." (*Taylor v. Buff* (1985) 172 Cal.App.3d 384, 390.) The immunity applies to both nuisance and dangerous condition claims. (See Gov. Code, § 815, subd. (b); *Conway*, *supra*, 231 Cal.App.4th at p. 1008; *Wright v. City of Los Angeles* (2001) 93 Cal.App.4th 683, 688; *Taylor*, *supra*, 172 Cal.App.3d at p. 388.)

Emergency response immunity. The California Emergency Services Act requires "[p]ublic employees" to "assist . . . in securing disaster-related assistance and services." (Gov. Code, § 8596, subd. (c).) In return, it provides that "[t]he state or its political subdivisions shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty . . . ." (*Id.* § 8655.) This immunity extends to "persons duly impressed into service during a . . . local emergency, in . . . performing any of their authorized functions or duties." (*Id.* § 8657, subd. (a).) The Court of Appeal has explained: "In situations in which the state must take steps necessary to quell an emergency, it must be able to act with speed and confidence, unhampered by fear of tort liability." (*Thousand Trails, Inc. v. Cal. Reclamation Dist. No. 17* (2004) 124 Cal.App.4th 450, 458.)

Plaintiffs have two factual theories based on the alleged problems with the power system. Statutory immunities bar both theories.

First, Plaintiffs allege that the City's decision not to de-energize certain power lines in the Palisades area led to spot fires. (MC ¶¶ 208-209, 216, 220.) However, the decision whether to de-energize a power line is a textbook example of a discretionary policy "judgment" that is not amenable to judicial review. (*Conway*, *supra*, 231 Cal.App.4th at p. 1018.) When deciding whether to de-energize circuits, utilities balance the fact that "power shutoffs can cause real harm to affected individuals and businesses" against "the risk that . . . utility infrastructure would ignite a wildfire during extreme weather conditions." (*Gantner v. PG&E Corp.* (2023) 15 Cal.5th 396, 400, 409.) When, as here, officials "weigh[] the options available" and conclude a particular course of "action would enhance . . . safety in the event of an emergency," immunity applies.

(*Taylor*, *supra*, 172 Cal.App.3d at pp. 388-389; see also *Odello Bros. v. County of Monterey* (1998) 63 Cal.App.4th 778, 793 [applying discretionary function immunity to trespass claim arising from county's flood plan and decision to breach a levee during a state of emergency].)

The Legislature specifically directed municipal utilities, such as LADWP, to prepare a "wildfire mitigation plan" that "consider[s]" "[p]rotocols for disabling reclosers and deenergizing portions of the electrical distribution system that consider the associated impacts on public safety . . ." (Pub. Util. Code, § 8387, subd. (b)(1)); *id.* § 8387, subd. (b)(2)(F).) LADWP made such a plan, and it adopted a policy *not* to preemptively de-energize, because the "adverse impact on health, safety, and quality of life of its customers outweighs the perceived benefits derived from pre-emptive power shut-offs." (Exhibit A to Request for Judicial Notice at p. 45.) LADWP also made the decision to empower a team of specialists to de-energize particular lines only if "deemed necessary based on safety and reliability issues." (*Ibid*.) That the "Legislature has specifically granted" LADWP "the power to weigh potential risks and benefits and to establish standards" shows that de-energization decisions "comprise[] the resolution of policy considerations, entrusted by statute to a coordinate branch of government, that compels immunity from judicial reexamination." (See *Johnson v. State* (1969) 69 Cal.2d 782, 795, fn. omitted.)

In an apparent attempt to plead around discretionary function immunity, Plaintiffs assert that the Wildfire Mitigation Plan itself "required LADWP to block reclosers during Red Flag Alerts by the LAFD," liked those issued on January 6. (MC ¶¶ 208, 229-230.) But documents incorporated into the Master Complaint show that is false. The Wildfire Mitigation Plan, which is quoted from and incorporated into the Master Complaint, states that LADWP will block reclosers in Tier 3 High Fire Threat Districts "unless it is imprudent." (See Exhibit A to Request for Judicial Notice at p. 44; see also MC ¶ 208 [quoting language about Tier 3 districts].) But as shown in the Public Utilities Commission map, also cited in Plaintiffs' Complaint (MC ¶ 49 fn. 3), the Palisades is in the *Tier 2* fire threat district, not a Tier 3 district. (See Exhibit B to Request for Judicial Notice.) No LADWP policy required the agency to shut off power in the Palisades.

The California Emergency Services Act independently bars Plaintiffs' tort claims based on LADWP's purported failure to de-energize circuits as part of its emergency response. The

"immunity granted" by that statute "is significantly broader than" even discretionary function immunity and "encompass[es] not only the 'discretionary' act but also the 'performance of' or '*failure to perform*' that act. (*Labadie v. State of California* (1989) 208 Cal.App.3d 1366, 1369, italics added; see *Thousand Trails*, *supra*, 124 Cal.App.4th at p. 458.) The City is immune from tort claims arising from its purported failure to de-energize power lines in an emergency.

Second, Plaintiffs allege that the City's decision not to allocate funds to improve power equipment led to spot fires. Specifically, they allege that the City: (1) failed to install "automatic reclosers," which would have allowed it to de-energize lines remotely; (2) failed to improve poles to withstand up to 97 mph winds; and (3) failed to sufficiently fund Distribution Station ("DS") 29, where a cord allegedly malfunctioned on January 7. (MC ¶¶ 205-206, 208-209, 224, 228.) However, a public entity's decisions "involving the allocation of limited funds [are] purely discretionary one[s]," and are therefore protected by the discretionary act immunity. (See *Taylor, supra*, 172 Cal.App.3d at pp. 390-391.) For example, in *Taylor,* the Court of Appeal considered a claim for damages sustained in a fight after a jail security system failed and held that the county could not be liable for a failure to "allocat[e] funds for the repair of the jail security systems" because such budgetary decisions are the province of the legislative branch, not the Courts. (*Id.* at p. 389.) The same principle applies to Plaintiffs' failure-to-upgrade claims.

Discretionary function immunity bars Plaintiffs' automatic recloser theory for an additional reason: for the reclosers to have made any difference, Plaintiffs must speculate that the City would have decided to use those reclosers to shut off power. But courts have held that theories of liability cannot depend on speculation about how a government would have exercised its discretion. (See *State Dept. of State Hospitals v. Super. Ct.* (2015) 61 Cal.4th 339, 356.)

2. The DS-29 Allegations Do Not State a Tort Claim

Setting aside emergency services and discretionary function immunities, Plaintiffs' theory of liability based on alleged failures to shut off power equipment at DS-29 (MC ¶¶ 209-222) fail to state a claim for an additional reason.

Plaintiffs allege that an operator at DS-29 tried but failed to de-energize one circuit because a cord was in "bad order" and "inoperable." (MC ¶¶ 221-224.) However, Plaintiffs fail

to allege, as they must under Government Code section 835, that a "negligent or wrongful act or 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. Plaintiffs simply allege that a cord "malfunctioned" in the moment before the employee had to evacuate the station. (MC ¶ 224.) That is insufficient. By statute, the City is not strictly liable for damages arising from equipment failure; rather, under the statute's "plain language," Plaintiffs must allege that the equipment failure resulted from negligence, which they fail to do. (*Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1133.)

C. Statutory Immunities Bar Plaintiffs' Vacant-Lot Claims

Plaintiffs bring two statutory tort claims alleging that because the Los Angeles Fire Department did not clear brush from City-owned vacant lots in the Castellammare neighborhood, spot fires resulted and spread to neighboring properties when "embers from the Palisades Fire landed in [the vacant lots'] overgrown brush." (MC ¶¶ 271-274, 278-279.) Plaintiffs' vacant-lot claims are barred by statutory immunities.

Public entities are not liable for injuries caused by the natural condition of unimproved land. (Gov. Code, § 831.2.) This "natural condition immunity applies even 'where the public entity had knowledge of a dangerous condition'"; and it applies "'where a governmental entity voluntarily assumes a protective service, inducing public reliance, and through the negligent performance of that protective service concurrently causes a member of the public to be victimized by a dangerous, latent, and natural condition.'" (*Alana M. v. State of California* (2016) 245 Cal.App.4th 1482, 1488.)

Plaintiffs try to avoid this broad natural condition immunity by alleging that the Fire Department created the dangerous condition by failing to clear all brush from the lots. But the Legislature enacted "sweeping" statutory fire protection immunities that bar claims that a public entity failed "to correct or remedy any hazardous conditions liable to cause fire." (*Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405, 410, 412; Gov. Code, §§ 850, 850.2, 850.4.) In *Cochran*, the city left in place a trove of magnesium—"a highly combustible substance" and "known fire hazard[]" far riskier than overgrown brush—at a site the city had inspected.

(*Cochran*, *supra*, 155 Cal.App.3d at pp. 408, 411.) The plaintiffs argued that, in doing so, the city violated "various sections of [its] Municipal Code" that required it to "remedy any hazardous conditions liable to cause fire." (*Id.* at pp. 410-411.) The court held the city immune because public entities are not liable for an "unreasonable failure to maintain sufficiently adequate fire-protection service, even when a public entity has undertaken to provide such service." (*Id.* at p. 413.) The result is the same here. Plaintiffs allege that, in violation of the Municipal Code, the City failed to clear overgrown brush on vacant lots, and the brush posed "a fire hazard," and was "a ready fuel supply to augment the spread or intensity of a fire." (MC ¶¶ 284, 291.) But as *Cochran* holds, clearing a fire hazard, even if required by ordinance, is precisely the type of "fire protection service" the City is immune "for fail[ing]" to "provide." (Gov. Code, §§ 850, 850.2.)

D. The Master Complaint Fails To Adequately Plead Causation For Any Claim Against The City

Even in a master complaint framework, Plaintiffs must allege plausible claims—including the necessary element of causation. No Plaintiff adequately alleges causation. Instead, they assert generic legal conclusions.[7] That approach falls short for three reasons.

No But-For Causation Allegations. First, no Plaintiff alleges that any City act or omission was the but-for cause of their property damage—a requirement for each tort and takings cause of action. In tort, a plaintiff generally must allege that either: (1) *but for* the defendant's conduct, their specific damages would not have occurred; or (2) the defendant's conduct was *sufficient* to cause their specific damages and operated *independently* of other causal factors. (See *Viner v. Sweet* (2003) 30 Cal.4th 1232, 1241 [describing tort causation]; *State ex rel. Wilson v. Super. Ct.* (2014) 227 Cal.App.4th 579, 606 [explaining that "the 'but for' limitation on proof of causation does not apply if the wrongful conduct would alone have produced the harm even without the contribution by other forces"].) Plaintiffs do not allege the City's acts or omissions

[7] See MC ¶ 413 ("the damage to Plaintiffs' properties was proximately and substantially caused by Defendants' actions"), ¶ 421 (similar), ¶ 431 (the City's act or omission "was a substantial factor in causing the Plaintiffs' injuries and damages"), ¶ 442 (the City's act or omission "was a direct and legal cause of the harm"), ¶ 460 (similar), ¶ 449 ("dangerous conditions caused the injuries to Plaintiffs").

were sufficient to cause anyone's fire damages, or that those acts or omissions operated independently of the Palisades Fire. Therefore, they had to allege but-for causation to sustain a tort claim. For Plaintiffs' inverse condemnation claims, each plaintiff likewise needed to allege "but-for causation." (*City of Oroville*, *supra*, 7 Cal.5th at p. 1108.) The failure of Plaintiffs to allege but-for causation therefore requires dismissal of each of their claims.

If anything, the Plaintiffs' allegations *negate* but-for causation. Plaintiffs allege that a massive conflagration erupted in the mountains at 10:30 a.m. and spread "rapidly down the canyon" to the PCH by the early afternoon (MC ¶ 241; see *supra*, n.4), *before* the first water tank allegedly ran out of water at 4:45 p.m. (MC ¶ 137), and *before* Plaintiffs allege that LADWP power equipment caused spot fires (*id*. ¶¶ 229, 230). Because Plaintiffs allege that the fire had already ignited a vast area before the water supply or spot fires allegedly became issues, it is highly implausible that the water system or spot fires were the but-for cause of Plaintiffs' losses.

Failure To Plead Takings Causation. Plaintiffs' takings claims fail to plead causation adequately for additional reasons. For takings claims, property damage must be "'predominantly' produced by the [public] improvement." (*City of Oroville*, *supra*, 7 Cal.5th at p. 1108.) And "even in the case of multiple concurrent causes," Plaintiffs must allege that "the injury to private property is an '*inescapable or unavoidable consequence*' of the public improvement as planned and constructed." (*Ibid*., italics added.) Because Plaintiffs fail to allege that their property losses were predominantly caused by a City improvement and that those losses were the inescapable or unavoidable consequence of the improvement, their takings claims must be dismissed.

Not Pleading Causation With Particularity. Plaintiffs' tort claims are based on statute, and "every fact material to the existence of . . . statutory liability must be pleaded with particularity." (*Lopez*, *supra*, 40 Cal.3d at p. 795); see *Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 5 ["General allegations are . . . inadequate."].)

Moreover, where, as here, a plaintiff's allegations "do not naturally give rise to an inference of causation[,] the plaintiff must plead specific facts affording an inference the one caused the others." (*Christensen v. Super. Ct.* (1991) 54 Cal.3d 868, 900-901.) Here, the connection between the city's acts or omissions and any particular plaintiff's damages is "by no

means plainly apparent." (*State Dept. of State Hospitals v. Super. Ct.* (2015) 61 Cal.4th 339, 358 (Werdegar, J., concurring).) Plaintiffs allege hydrants in certain areas lost water pressure at certain times, and allege spot fires in discrete locations and times. But none of these events started the Palisades Fire, and the Master Complaint, which seeks to cover thousands of plaintiffs' claims, includes virtually no allegations that could connect these events to specific property damage. In a few paragraphs, Plaintiffs assert that specific utility poles or power equipment caused specific properties to burn or that City-owned property caught fire and spread to an adjacent property. (MC ¶¶ 237-240, 280.) But beyond that, the Master Complaint is silent as to causation.

A master complaint structure does not excuse Plaintiffs from the basic requirement to plead all the elements of a claim. (*Williams v. Sac. River Cats Baseball Club, LLC* (2019) 40 Cal.App.5th 280, 286 ["To establish that a cause of action has been adequately pled, a plaintiff must demonstrate he or she has alleged 'facts sufficient to establish *every element of that cause of action.*'"].) Other than for a handful of properties (MC ¶¶ 237-240, 280), the Master Complaint does not even try. Plaintiffs allege that the fire damaged properties from the Palisades to Malibu, that over a dozen entities failed to contain the fire or contributed to its spread, and that the City's purported contributions occurred in specific locations. It is unimaginable that each Plaintiff could claim in good faith that low water pressure in the Palisades Highlands, *and* overgrown brush in Castellammare, *and* a pole fire in a Malibu mobile home park, *and* every other event attributed to the City was the but-for or predominant cause of each Plaintiff's specific property damage.

Each plaintiff must allege the requisite level of causation with the required level of particularity. It may be that notices of adoption or short form complaints can be used to do so. But no statute, rule of court, or legal doctrine excuses Plaintiffs from the requirement to plead each element of their claims. To the extent any of the causes of action against the City survive the threshold legal problems described above, the Master Complaint claims should be dismissed without prejudice, and Plaintiffs should be required to sufficiently plead causation.

V. CONCLUSION

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

DATED: November 13, 2025

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