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Exempt from filing fee (Gov. Code § 6103.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAN GRIGSBY, an individual; KAREN GRIGSBY, an individual; GRIGSBY FAMILY TRUST; DAN GRIGSBY, as Trustee of the GRIGSBY FAMILY TRUST; KAREN GRIGSBY, as Trustee of the GRIGSBY FAMILY TRUST; ROBERT FLUTIE, an individual; ABUNDANT SUCCESS, LLC d/b/a FLOUR CAFE AND PIZZERIA; ANDREA LOEWEN, an individual; JEFFREY BAZYLER, an individual; DANIEL CORREA DE TOLEDO, an individual; AIDA GARCIA-TOLEDO, an individual; JOHN FERBAS, an individual; KATHIE FERBAS, an individual; ASHLEY FERBAS, an individual; FERBAS FAMILY TRUST; JOHN FERBAS, as Trustee of the FERBAS FAMILY TRUST; KATHIE FERBAS, as Trustee of the FERBAS FAMILY TRUST: PETER PARTAIN, an individual; LISA PARTAIN, an individual; MILES PARTAIN, an individual; MARCUS PARTAIN, an individual; YELENA ENTIN, an individual; ANNA ENTIN, an individual; YELENA ENTIN LIVING TRUST; YELENA ENTIN, as Trustee of the YELENA ENTIN LIVING TRUST; BORIS YERUHIM, an individual; ALLA YERUHIM, an individual; YERUHIM FAMILY TRUST; BORIS YERUHIM, as Trustee of the YERUHIM FAMILY TRUST; ALLA

Case No. 25STCV00832
And All Related Cases

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER BY DEFENDANT STATE OF CALIFORNIA TO THE MASTER COMPLAINT

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

Honorable Samantha Jessner

RES ID: No hearing reservation required. Hearing date specially set by the Court.

YERUHIM, as Trustee of the YERUHIM FAMILY TRUST; KRISTIN ARMFIELD, an individual; KRISTIN ARMFIELD TRUST; KRISTIN ARMFIELD, as Trustee of the KRISTIN ARMFIELD TRUST, Plaintiffs, v. CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER, a government entity; CITY OF LOS ANGELES, a government entity; CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, a government entity; STATE OF CALIFORNIA; and DOES 1 through 50, inclusive, Defendants.
AND ALL RELATED CASES.

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I

INTRODUCTION

The Palisades Fire was the most destructive fire in the history of the City of Los Angeles, and among the most destructive in recorded California history. The State has directed over $2.5 billion dollars to emergency response and recovery efforts, supported residents in applying for over $3 billion in approved individual assistance and small business loans, and has, through government and philanthropic partnerships, awarded tens of millions directly to impacted residents and small businesses. Litigation against the State and the California Department of Parks and Recreation (Parks) on claims of a "dangerous condition of public property" and "public nuisance" however, is not a valid mechanism in circumstances like these for financial recovery against the State. Clear statutory and case law preclude liability against Parks in this action, and the demurrer should be sustained without leave to amend.

First, the master complaint does not sufficiently allege the existence of a dangerous condition within the meaning of Government Code Section 830. In this regard, case law makes clear that Parks cannot be held liable, as a matter of law, for the criminal conduct of a third person in starting the fire particularly when there was no physical defect in the naturally occurring growth of chaparral and other vegetation in Topanga State Park. Second, even if a dangerous condition could be alleged, the master complaint does not sufficiently allege the existence of actual or constructive notice of the alleged dangerous condition.

Plaintiffs' allegations that Parks should have provided fire investigation of and response to the fire, after the agency handling the fire protection response, the City of Los Angeles Fire Department (LAFD) reported that it was extinguished, is not actionable or reasonable. In this regard, Parks is immune from liability pursuant to the fire protection immunity of Government Code sections 850 and 850.2. The police protection immunity under Government Code section 845 and the natural condition immunity under Government Code section 831.2 also preclude liability against Parks.

With regard to the nuisance causes of action, no cause of action can be stated because clear case law holds that no cause of action exists under a nuisance theory where it is based on a

claim of a defective condition of public property. Liability is also precluded under the immunity of Civil Code section 3482 which precludes a nuisance cause of action against Parks because it is authorized by statute to operate Topanga State Park. In addition, even if a cause of action for nuisance could be stated, which it cannot, the immunities discussed above under Government Code sections 850, 850.2, 845 and 831.2 as precluding the dangerous condition causes of action also preclude the nuisance causes of action.

II

FACTS

The Lachman Fire was first reported at 12:07 a.m. on January 1, 2025, near Skull Rock on the Temescal Ridge Trail in Pacific Palisades. LAFD responded and reported that the fire was fully contained at approximately 4:48 a.m. (Master Complaint, ¶¶ 62-63, 65.) LAFD reported that "some resources will be released as the mop up operation continues to ensure no flare ups. No structures damaged and no injuries reported. Fire held at eight acres." (Master Complaint, ¶ 65, p. 19:3-6.) Plaintiffs state that "the Lachman Fire was extinguished by the LAFD and the State was notified of it." (Master Complaint, ¶ 371, p. 115:8.)[1]

The master complaint references four photographs taken on January 2, 2025, at 8:07 a.m. of the Lachman Fire burn area by a hiker stating that it shows that no firefighters remained on scene less than four hours after LAFD declared the fire fully contained. Plaintiffs do not allege, and the photos do not show, any visible indication of any flame, smoke or smoldering embers. (Master Complaint, ¶ 68, pp. 19-20.) The master complaint contains no allegation as to any visible indication of any flame, smoke or smoldering embers in this area from January 2 until

[1] Background information as to LAFD's handling of the fire protection response is provided by Public Resources Code sections 4102 and 4125 through 4127 addressing responsibility areas. In this regard, the California Direct Protection Area (DPA) Map by the California Wildland Fire Coordinating Group (CWCG), which is an interagency entity that provides wildland fire management support across the State, illustrates Local Responsibility Areas (LRA) and State Responsibility Areas in gray and yellow respectively. See Exhibit C to the Request for Judicial Notice. For point of reference, Skull Rock is highlighted on this map as the Master Complaint indicates that the fire began near Skull Rock. (Master Complaint, ¶¶ 1, 62.) This map shows that the entire area around Skull Rock is well within the gray Local Responsibility Area.

a 911 caller in the Pacific Palisades reported a vegetation fire on January 7, 2025, at approximately 10:29 a.m., when LAFD responded back to that area. (Master Complaint, ¶¶ 85-87.) The fire spread from there leading to a catastrophe in the Palisades and beyond. (Master Complaint, ¶¶ 89-96.)

Jonathan Rinderknecht was subsequently arrested on a federal criminal complaint charging him with starting the Lachman Fire and Palisades fire. Citing the federal criminal complaint, plaintiffs note that the Palisades fire "was caused by a firebrand from the Lachman Fire, which continued to smolder within the root structure of the vegetation." (Master Complaint, ¶ 75; citing *United States of America v. Jonathan Rinderknecht*, USCD Case No. 2:25-mj-06103-DUTY, fn. 10 (A copy of the criminal complaint, filed on 10/2/25, is attached to the Request for Judicial Notice as Exhibit A, ¶¶ 10, 48.)[2]

The criminal complaint states that a multi-agency investigation determined that the Palisades fire was a "holdover fire," i.e. a continuation of the Lachman fire "meaning that they were essentially the same fire that burned and/or smoldered continuously." (Ex. A ¶ 9, including fn. 1.) A holdover fire is "defined as a fire that remained dormant for a considerable time." (Ex. A, ¶ 43.) In reference to the firebrand which continued to smolder within the root structure of the vegetation, the criminal complaint states that "this underground burning was not visible to firefighters in the aftermath of the Lachman fire and was not visible to members of the public who visited the hillside after the Lachman fire." (Ex. A, ¶ 43.)

In this regard, the criminal complaint notes that "although the Los Angeles City Fire Department (LAFD) quickly suppressed the Lachman fire on January 1, unbeknownst to anyone the fire continued to smolder and burn underground, within the roots structure of dense vegetation." (Ex. A, ¶ 9.) On January 1, 2025, Los Angeles County Fire Department (LACoFD) crews had dug a perimeter along the south containment line of the Lachman fire. (Ex. A, ¶ 42.) On January 2, 2025, LAFD personnel returned to this area and "it appeared to them that the fire was fully extinguished." (Ex. A, ¶ 31.) The criminal complaint states that "the investigative team

[2] In an indictment filed on October 15, 2025, Rinderknecht was charged with setting "the fire known as the Lachman fire and Palisades fire." (Ex. B to Req. for Jud. Notice.)

determined that the specific origin area of the Palisades file was a burned-out root structure at the base of dense vegetation approximately 20 feet south of the perimeter of the Lachman fire." (Ex. A, ¶ 42.)

The master complaint refers to the "holdover fire" discussed above as a rekindling that occurred on January 7, 2025, noting that many experts have opined that the fire "was ignited from a rekindling of the embers left after the Lachman Fire." (Master Complaint, ¶ 77.) The master complaint notes comments from a former LAFD Asst. Chief, Patrick Butler, who "said that chaparral can burn underground without visible flames for weeks after the original fire has been knocked down" and that "he had to deal with flare-ups of unseen embers for about a week after the 2019 Getty fire . . ." (Master Complaint, ¶ 80.) Plaintiffs also rely on wildland fire investigator Terry Taylor's statement discussing the possibility of rekindling stating that, as a general matter, "the fire goes deep down into the root structure, so you may not get it out even if you dump water on it." (Master Complaint, ¶ 82.) Plaintiffs allege that Parks would have been aware that holdover or rekindled fires do occur and thus "were on actual and constructive notice that there was a dangerous condition that increased the risk for a future fire on their land." (Master Complaint, ¶ 84.)

The master complaint references a satellite photo from the criminal complaint depicting the alleged proximity of the "rekindling" that occurred on January 7 alleging that point to be in Topanga State Park. (Master Complaint, ¶ 76, pp. 23-24; Ex. A, p.21.) However, the master complaint contains no allegation as to any visible indication of any flame, smoke or smoldering embers in this area from January 2 up to the "rekindling" on January 7.

There is no allegation that any Parks' employee started the fire on January 1 or physically rekindled it on January 7. Nor is there any allegation that there was anything other than naturally occurring vegetation in Topanga State Park. Plaintiffs make the conclusory allegation that "the dangerous condition on the State's property was a change from the natural condition" that was "due to the known, man-made changed condition of the State's property" and that the "residual firebrands and embers were not a natural condition." (Master Complaint, ¶ 72, 373.) The master

complaint does not specify who made the "man-made" changes but the only logical inference would be that it was the arsonist who started the fire.

Despite the alleged facts that LAFD had reported that the fire was fully contained on January 1, that LAFD advised that the mop up operation would continue to ensure no flare ups and that LAFD notified Parks that the fire was extinguished, plaintiffs allege that Parks is liable because it "failed to provide proper fire protection on its property" thus allowing a rekindling of the fire. (Master Complaint, ¶ 367.) As a result of Park's allowance of this alleged dangerous condition to exist on its property "without providing any fire protection"**,** plaintiffs allege that the fire re-ignited on January 7. (Master Complaint, ¶ 372.)

Plaintiffs allege that this requirement to provide fire protection, due to the circumstances of extreme fire weather conditions and overgrown dry chaparral in the park, included a duty to inspect the Park given that embers in the root structure of chaparral are a well-known phenomenon. (Master Complaint, ¶ 371.) Plaintiffs infer that this duty included Parks using a thermal imaging camera or infrared device to ensure that there were no remaining embers or hot spots that could rekindle and that someone should have been watching the burn scar area either by remote camera or in person. (Master Complaint, ¶¶ 68, 370.)

There are four alleged causes of action directed against Parks, all of which are based on essentially the same underlying factual allegations discussed above. The difference between the first and third causes of action for dangerous condition of public property is that the first cause of action is alleged as property in Topanga State Park in the area of the origin of the fire (Master Complaint, ¶ 366). The third cause of action refers to parcels plaintiffs call "vacant lots" that are not in the area of the origin of the fire but are alleged to have had overgrown brush that contributed to the overall spread of the fire into other neighborhoods. (Master Complaint, ¶ 287, pp. 92-93, ¶¶ 289-290, 393.) However, a comparison of the satellite photos of the parcels at pages 92-93 of the master complaint to the State Parks map of the Topanga State Park area shows that these parcels are located in and part of Topanga State Park. (See Ex. D to Req. Jud. Notice (The first page of Ex. D depicts a broader view of Topanga State Park, the second page zooms in

on the area at and around Los Liones Drive which shows that the subject parcels are in green which mean they are part of the park).)

The difference between the second and fourth causes of action for public nuisance is essentially the same as the difference between the first and third causes of action. The second cause of action refers to property in Topanga State Park in the area of the origin of the fire. (Master Complaint, ¶ 380.) The fourth cause of action alleges that the same "aforementioned" parcels identified in the third cause action, that are actually part of Topanga State Park, constituted a public nuisance. (Master Complaint, ¶ 397, 400.)

III

ARGUMENT

A. SUSTAINING A DEMURRER WITHOUT LEAVE TO AMEND IS APPROPRIATE WHERE THERE CAN BE NO LIABILITY, AS A MATTER OF LAW

Code of Civil Procedure section 430.10 states that the party against whom a complaint has been filed may object by demurrer on the ground that the pleading does not state facts sufficient to constitute a cause of action. For purpose of testing the sufficiency of a cause of action, a demurrer admits material facts properly pleaded, "but not contentions, deductions or conclusions of fact or law." (*Adelman v. Associated Intern. Ins.* (2001)90 Cal.App.4th 352, 359).

"In determining the sufficiency of a complaint against demurrer the court considers not only the contents of the complaint but also matters of which judicial notice may be taken. Accordingly, a complaint otherwise good on its face is subject to demurrer when facts judicially noticed render it defective." (*Hogen v. Valley Hosp.* (1983)147 Cal.App.3d 119, 126).

"If there is a reasonable possibility the defect can be cured the plaintiffs should be given leave to amend. If there can be no liability as a matter of law the pleader should be given no leave to amend." (*Ramirez v. USAA Casualty* (1991) 234 Cal.App.3d 391, 397). The burden is on plaintiffs to show in what manner they can amend the complaint and how that amendment will change the legal effect of the pleading. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349).

B. THE DEMURRER SHOULD BE SUSTAINED IN ITS ENTIRETY WITHOUT LEAVE TO AMEND

Government Code section 815 provides that, "except as otherwise provided by statute, public entities are not liable for a tortious injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov. Code § 815, subd. (a).) The California Supreme Court has repeatedly and clearly held that, "under the Government Claims Act (Govt. Code, §810 et seq.), there is no common law tort liability for public entities in California; instead, such liability must be based on statute." (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 897.)

The intent of the Government Claims Act is "not to expand the rights of plaintiffs against government entities. Rather, the intent of the act is to confine potential governmental liability to rigidly delineated circumstances." (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991.) "Thus, in the absence of some constitutional requirement, public entities may be liable only if a statute declares them to be liable." (*County of Los Angeles v. Superior Court (Terrell R.)* (2002) 102 Cal.App.4th 627, 637.) The applicable enactment must be alleged in specific terms. (*Id.* at p. 638.) Every fact material to the existence of its statutory liability "must be pleaded with particularity." (*City of Los Angeles v. Superior Court* (2021) 62 Cal.App.5th 129, 138.)

Furthermore, "since all California governmental tort liability flows from the California Government Claims Act, the plaintiff must plead facts sufficient to show his or her cause of action lies outside the breadth of any applicable statutory immunity." (*Id. at p.*148.) Immunity provisions will, "as a general rule prevail over all sections imposing liability." (*Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 330, 334.) "Whether plaintiffs have pleaded sufficient facts to avoid defendants' statutory immunity presents a question of law . . ." (*Id.* at p. 334.)

A master complaint is required to satisfy these pleading requirements. (*Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 708.)

"The sole statutory basis for imposing liability on public entities as property owners is Government Code section 835." (*City of Los Angeles v. Superior Court* (2021) 62 Cal.App.5th 129, 139, quoting *Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347; see also,

Summerfield v. City of Inglewood (2023) 96 Cal.App.5th 983, 993, *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 438-439.)

1) <u>The Demurrer Should be Sustained Without Leave to Amend as to the Dangerous Condition Causes of Action</u>

"To establish liability under section 835, a plaintiff must prove that, at the time of injury, a dangerous condition existed on public property, that it created a reasonably foreseeable risk of the kind of injury suffered, and that it proximately caused the injury." (*Restivo v. City of Petaluma* (2025) 111 Cal.App.5th 267, 274.)

A "dangerous condition" of public property is defined by statute as "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used." (Gov. Code § 830, subd. (a).)

"The existence of a dangerous condition ordinarily is a question of fact, but the issue may be resolved as a matter of law if reasonable minds can come to only one conclusion." (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1133.) "Accordingly, if the facts pleaded by the plaintiff as a matter of law cannot support the finding of the existence of a dangerous condition within the meaning of the statutory scheme, a court may properly sustain a demurrer to the complaint." (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 440.) "It is for the court to determine whether, as a matter of law, a given defect is not dangerous." (*Salas v. California Dept. of Transp.* (2011) 198 Cal.App.4th 1058, 1070.)

"A plaintiff must also prove that a public employee's negligence or misconduct created the dangerous condition, or that the public entity had actual or constructive notice of the condition a sufficient time before the injury to protect against it." (*Restivo, supra,* 111 Cal.App.5th at p. 275.)

a. The Demurrer Should be Sustained Without Leave to Amend Because the Allegations of the Master Complaint Fail to Establish a Dangerous Condition Within the Meaning of Government Code Section 830

"A dangerous condition exists when public property is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself, or possesses

physical characteristics in its design, location, features or relationship to its surroundings that endanger users." (*Cerna, supra,* 161 Cal.App.4th at pp. 1347-1348.)

"Although public entities may be held liable for injuries occurring to reasonably foreseeable users of the property, even when the property is used for a purpose for which it is not designed or which is illegal, liability may ensue only if the property creates a substantial risk of injury when it is used with due care." (*Schonfeldt v. State of California* (1998) 61 Cal.App.4th 1462, 1466.) "Any property can be dangerous if used in a sufficiently abnormal manner. A public entity is required only to make its property safe for reasonably foreseeable careful use." (*Id.* citing Govt. Code § 830; Law Revision Commission Comments.) "Whether a condition creates a substantial risk of harm depends on how the general public would use the property exercising due care . . ." (*Id.* citing Govt. Code § 830.)

It is well established that "public entities generally are not liable for failing to protect individuals against crime." (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) Third party conduct by itself, "unrelated to the condition of the property, does not constitute a 'dangerous condition' for which a public entity may be held liable." (*Id.* at p. 1134.) "A public entity may be liable if it maintained the property in such a way so as to increase the risk of criminal activity or in such a way as to create a reasonably foreseeable risk of criminal conduct." (*Id.* at p. 1134-1135.) However, "there must be a defect in the physical condition of the property and that defect must have some causal relationship to the third party conduct that injures the plaintiff." (*Cerna, supra,* 161 Cal.App.4th at p. 1348.)

Avedon v. State of California (2010) 186 Cal.App.4th 1336, involved facts closely analogous to those alleged herein. *Avedon* was based on the 2007 Corral Canyon fire that started in Malibu Creek State Park wherein the plaintiffs sued the State on theories of dangerous condition of public property and nuisance. (*Id.* at p. 1339.) In *Avedon*, some individuals built a bonfire inside a cave in the park which, in the early hours the following morning, ignited chaparral on the surrounding hillsides spreading through Corral Canyon toward the ocean burning almost 5,000 acres, destroying more than 50 homes and damaging many others. (*Id.*)

The *Avedon* plaintiffs alleged that the State maintained the property in a dangerous

condition by allowing entry to the caves at the park which were known to attract patrons who then lit bonfires inside. (*Id.* at p. 1341.) The Court of Appeal affirmed the trial court's order sustaining the State's demurrer to the dangerous condition and nuisance theories. (*Id.* at pp. 1338, 1340). The Court of Appeal found that the plaintiffs' allegations suggested no inherent defect in the property, but rather, were based on the wrongful conduct of third parties on public property which did not constitute a dangerous condition for which a public entity can be held liable. (*Id*. at pp. 1341-42.)

Similarly, here, there is no dangerous condition because plaintiffs' have not and cannot articulate a defect in the physical condition of the park property apart from the wrongful acts of a third person on the park property. The property at issue is naturally occurring growth of plants such as chaparral and other vegetation in a natural habitat in a state park which is a natural condition of the land. (*City of Chico v. Superior Court* (2021) 68 Cal.App.5th 352, 362-363.) In this regard, Public Resources Code section 5019.53 states in pertinent part:

> "State parks consist of relatively spacious areas of outstanding scenic or natural character, oftentimes also containing significant historical, archaeological, ecological, geological, or other similar values. The purpose of state parks shall be to preserve outstanding natural, scenic, and cultural values, indigenous aquatic and terrestrial fauna and flora, and the most significant examples of ecological regions of California . . ."

(Pub. Resources Code, § 5019.53.)

Thus, there is no physical characteristic in such a natural habitat that creates a fire. Here, it is the wrongful conduct itself of a third person who is now charged with arson for starting the fire. Plaintiffs attempt to plead around this deficiency by alleging that the start of the fire on January 1, with the residual burn scar and embers deep in the root structure, somehow converted the natural condition of the park to a defective condition. However, these allegations concede that this condition was man-made which in this case was the wrongful conduct of a third person in starting the fire.

Furthermore, "a lack of human supervision and protection is not a deficiency in the physical characteristics of public property." (*Cerna, supra,* 161 Cal.App.4th at p. 1352.) Thus, the allegations that Parks' personnel should have gone up to the area after January 1 to engage in

fire protection activity to inspect for possible embers in the root structure cannot be construed as a physical defect in the park property. Therefore, the master complaint fails to sufficiently allege the existence of a dangerous condition, as a matter of law.

In addition, when the subject park property is used *with due care*, it presents no danger to the public. It is *only* the wrongful conduct by a third person, such as an alleged arsonist setting a fire in the park, that creates the danger. Therefore, based on the circumstances presented in this case, plaintiffs have not and cannot allege the existence of a dangerous condition that satisfies the requirements of Government Code section 830 thus precluding a dangerous condition cause of action against Parks.

b. The Demurrer Should be Sustained Without Leave to Amend because the Allegations of the Master Complaint Fail to Establish Actual or Constructive Notice, as a Matter of Law

Government Code section 835.2, subdivision (a), states that: "A public entity had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 835 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character." To establish actual notice, it is not enough to show that the public entity's employees had a general knowledge that the condition can sometimes occur. "There must be some evidence that the employees had knowledge of the particular dangerous condition in question." (*State of California v. Superior Court of San Mateo County* (1968) 263 Cal.App.2d 396, 399.)

Here, plaintiffs have not and cannot allege that Parks had actual notice of the arsonist starting the fire on January 1 or that it had actual notice of the rekindling of the fire on January 7. Plaintiffs allege that defendants were aware of a history of wildfires in Topanga State Park, two previous years of record rainfall resulting in above average growth of vegetation, and a recent lack of rainfall combined with a warning of an extreme wind event. (Master Complaint, ¶¶ 48-60.) However, these allegations amount to nothing more than an allegation of general knowledge that a fire can sometimes occur under such conditions which the *State of California* case makes clear is insufficient. These allegations clearly cannot, as a matter of law, amount to actual notice that a wildfire would be started by an arsonist at that time in that location of the park.

The allegations of the master complaint also fail to establish constructive notice. "A claim for constructive notice has *two* threshold elements." (*Heskel v. City of San Diego,* (2014) 227 Cal.App.4th 313, 320 (emphasis in original).) "Constructive notice, under section 835.2, subdivision (b), requires a plaintiff to establish that the dangerous condition existed for such a period of time *and* was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character." (*Id.* at p. 317 (emphasis added).)

In *Heskel*, the plaintiff tripped over a metal base protruding from a city sidewalk that had been present for over a year. (*Id*. at pp. 315-316). The *Heskel* court found there was no constructive notice of the dangerous condition, as a matter of law, even though it had been present in a dangerous state for more than a year because the workers who had been in the area did not see the condition which created a reasonable inference that the condition was not obvious. (*Id*. at p. 318).

In *State of California,* the court determined that, as a matter of law, the requirements of constructive notice, as defined in 835.2, subdivision (b), were not met because "the primary and indispensable element of constructive notice is a showing that *the obvious condition existed a sufficient period of time before the accident*." (*State of California, supra,* 263 Cal.App.2d at p. 400 (emphasis in original).)

In *State of California,* the 2 ½ year old plaintiff was severely burned when he sat in the remains of a beach fire that was not apparent or obvious to his mother and others accompanying her who investigated the location. A state park ranger had cleaned up the vicinity where the incident occurred the day before, had seen remains of fires but saw no active fires nor felt any heat. (*Id.* at p. 398). The *State of California* court concluded "there was no evidence (direct or circumstantial) that the danger was obvious nor that the situation had existed for any particular length of time before the accident." (*Id.* at p. 400.)

In addition, the court in *Strongman v. County of Kern*, (1967) 255 Cal. App. 2d 308, wherein the plaintiff, stepping from a boat dock onto a wooden ramp, plunged her right foot through a hole left by a missing plank, affirmed the granting of nonsuit. (Id. at pp. 309-310). The

Strongman court concluded that there was no constructive notice, as a matter of law, concluding that it could not "be reasonably inferred that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character." (*Id.* at pp. 315-316).

These cases make clear that a plaintiff's failure to properly allege that the alleged dangerous condition was obvious *and* had existed for such a period of time that it should have been discovered warrants the sustaining of a demurrer.

Here, it is readily apparent that Parks could not have had constructive notice of the start of the fire on January 1 and plaintiffs have not alleged this. Plaintiffs do allege that Parks had constructive notice of embers in the chaparral root structure that led to the re-ignition of the fire on January 7. However, the master complaint does not contain the required allegations to establish constructive notice because it does not allege that the embers in the root structure were obvious a sufficient time before the re-ignition occurred for Parks employees to have discovered them.

Moreover, allegations in the master complaint further demonstrate that there is no basis for establishing that Parks had constructive notice in this case. As discussed above, allegations in the master complaint concede that LAFD had reported that the fire was fully contained at approximately 4:48 a.m. on January 1, that their mop-up operation was continuing to ensure no flare-ups and that LAFD had notified Parks that the fire was extinguished. There is no allegation in the master complaint that there was any visible indication of any flame, smoke or smoldering ambers in the area from January 2 up until the report of the re-ignition of the fire on January 7. In fact, the master complaint specifically discusses the concept of rekindling as involving "unseen" "underground" embers that go "deep down into the root structure." This would logically preclude an allegation that such a condition was obvious.

Plaintiffs are incorrectly attempting to infuse negligence principles into the notice component of the case. As discussed above, "the sole statutory basis for imposing liability on public entities as property owners is Government Code section 835." (*City of Los Angeles, supra,* 62 Cal.App.5th at p. 139.) Accordingly, a plaintiff may not rely on general negligence principles

to impose liability on a public entity for an alleged dangerous condition. (*Zelig, supra,* 27 Cal.4th at pp. 1131-1132.) Thus, allegations that Parks personnel should have taken further steps to look and monitor for a potential ember in the root structure by inspecting the area with a thermal imaging or infrared device or by stationing Parks personnel in the area in case a reignition occurred is contrary to the statutory requirements for establishing constructive notice under Government Code 831.2 and case law relative thereto.

Here, the dangerous condition statutes dictate that the appropriate inquiry with regard to constructive notice is that there must have been an obvious observable sign of an ember in the root structure for such a period of time that Parks should have discovered it before the rekindling occurred. Plaintiffs have not alleged that this occurred.

c. The Demurrer Should be Sustained Without Leave to Amend Because Parks is Immune from Liability, as a Matter of Law

Parks is also immune from liability pursuant to Government Code sections 850 and 850.2. Section 850 states, "neither a public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection service." (Gov. Code, § 850.) Section 850.2 states, "neither a public entity that has undertaken to provide fire protection service, nor an employee of such a public entity, is liable for any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities." (Gov. Code, § 850.2.) The Second District Court of Appeal in *Cairns* noted that "these sections provide for a *broad* immunity from liability for injuries resulting in connection with fire protection service." (*Cairns, supra,* 62 Cal.App.4th at p. 335; quoting Gov. Code, § 850, Law Revision Commission Comments (emphasis in original).) The Law Revision Commission Comments to Section 850 further state:

> "Sections 850 and 850.2 provide an absolute immunity from liability for injury resulting from failure to provide fire protection or from failure to provide enough personnel, equipment or other fire protection facilities. Whether fire protection should be provided at all, and the extent to which fire protection should be provided, are political decisions which are committed to the policy-making officials of government. To permit review of these decisions by judges and juries would remove the ultimate decision-making authority from those politically responsible for making the decisions."

(Gov. Code, § 850, Law Revision Commission Comments.)

"The statutes preclude an action against a public entity for failure to arrive at a fire in a timely manner, even where that failure is caused by the firefighters' negligence or willful misconduct. This broad grant of immunity means that public entities owe no duty to persons or property damaged by fire." (*People ex rel. Grijalva v. Superior Court* (2008) 159 Cal.App.4th 1072, 1078 (citation omitted).)

In *Cochran v. Herzog Engraving*, (1984) 155 Cal.App.3d 405, plaintiffs alleged that the City of San Mateo had a duty to inspect premises to correct or remedy any hazardous conditions likely to cause fire prior to a fire that resulted in the death of plaintiffs' decedent. (*Id.* at p. 409-410.) The *Cochran* court held that Government Code sections 850, 850.2 and 850.4 precluded liability under the circumstances presented in that case noting that "the language of these provisions is sweeping," (*Id.* at p. 412-413.) Thus, *Cochran* makes clear that the failure to conduct an inspection that prevents a fire from occurring is covered by these statutes.

Here, plaintiffs specifically allege that Parks is liable because it "failed to provide proper fire protection on its property" thereby making clear that the fire protection immunities under Government Code Sections 850 and 850.2 apply and preclude liability against Parks in this action. In addition, the allegations that Parks personnel should have monitored or inspected the area with a thermal imaging or infrared device in case a reignition occurred further illustrate that the asserted bases for liability against Parks in this action fall squarely within the fire protection immunities under Government Code Sections 850 and 850.2.

Plaintiffs seek to avoid these immunities by relying on *Vedder v. City of Imperial*, (1974) 36 Cal.App.3d 654, asserting that there is no governmental immunity "to allow a public entity to escape responsibility 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 that property." (Master Complaint, ¶ 365; quoting from *Vedder* at pp. 660-661.)

However, *Vedder* is clearly distinguishable from this case in that the fire in *Vedder* occurred on Imperial County airport property where large quantities of highly combustible gasoline were stored without the special equipment needed to control gasoline fires. (*Id.* at p.

659.) The property at issue here is undeveloped land with naturally growing chaparral and vegetation in a State park, not a developed airport. It goes without saying that Parks would not have stored any gasoline in the park let alone large quantities of highly combustible gasoline.

The Second District Court of Appeal in *Cairns* found that the plaintiffs' reliance on *Vedder* was misplaced because it was distinguishable from the facts in that case. (*Cairns, supra,* Cal.App. 4th at p. 336.) *Cairns* involved claims for dangerous condition and nuisance arising out of the 1993 Malibu fire based on plaintiffs' allegations that the closing of a road prevented access for fire fighters to reach properties that were damaged in the fire. (*Id.* at pp. 332-333.) In distinguishing *Vedder*, the court noted that, "defendants did not store flammable materials on the closed Rambla Pacifico road; the closed road was not in itself a fire hazard; the condition of the road did not cause the fire." (*Id.* at pp. 336 [affirming the sustaining of a demurrer based on the fire protection immunities].) Here, Parks did not store gasoline in the Park, the naturally growing chaparral and vegetation in a state park was not in itself a fire hazard absent some harmful third party conduct and it did not cause the fire as it was started by a third party who is now charged with arson for doing so.

The court in *Puskar v. City and County of San Francisco*, (2015) 239 Cal.App.4th 1248, also distinguished *Vedder,* noting that the alleged dangerous condition of the property was not the lack of firefighting or fire protection equipment but "the storing, or permitting the storage, of gasoline and other highly combustible chemicals on the premises in an unsafe manner, that is, without any means of preventing or controlling a fire." (*Id.* at p. 1255.) The *Puskar* court went further in rejecting *Vedder* stating: "We disagree with *Vedder* to the extent it suggests immunity under sections 850 and 850.2 does not attach when the public entity's decision is not a 'political decision to provide, or not to provide, fire protection to the public generally,' but a decision about property 'it owns and manages itself.'" (*Id.*) In this regard, the *Vedder* court's incorrect statement that these statutes should be strictly construed is clearly at odds with the *Cairns* holding that "these sections provide for a *broad* immunity from liability." (*Cairns, supra,* 62 Cal.App.4th at p. 335 (emphasis in original).)

Additionally, the immunities under Government Code sections 845 and 831.2 bar liability against Parks. Government Code section 845 states in pertinent part: "Neither a public entity nor a public employee is liable for failure to establish a police department or otherwise to provide police protection service . . ." (Gov. Code, § 845.) The Law Revision Commission Comments to section 845 state:

> "This section grants a general immunity for failure to provide police protection or for failure to provide enough police protection. Whether police protection should be provided at all, and the extent to which it should be provided, are political decisions which are committed to the policy-making officials of government. To permit review of these decisions by judges and juries would remove the ultimate decision-making authority from those politically responsible for making the decisions."

(Gov. Code, § 845; Law Revision Commission Comments.)

"The decision whether and how to equip and deploy available police personnel falls within the immunity provided by Government Code section 845." (*Zelig, supra,* 27 Cal.4th at p. 1144 [no liability for failure to prevent third party violence in the courthouse]; see also *Moncur v. City of Los Angeles* (1977) 68 Cal.App.3d 118 [no liability for failure to prevent access to storage lockers by airport users before they had been screened at a security barrier].)

Here, the allegations involve an alleged failure to stop the setting and expansion of the fire. However, the failure to prevent a third party from starting the fire invokes the immunity under section 845 because preventing the setting of the fire in this case would require some form of law enforcement presence in the park.

Government Code section 831.2 states "neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach." (Gov. Code, § 831.2.) "Section 831.2 provides for absolute immunity and prevails over the liability provisions of the Government Claims Act." (*Alana M. v. State of California* (2016) 245 Cal.App.4th 1482, 1487.) "The unmistakable purpose of section 831.2 is to encourage public entities to open their property for public recreational use by providing immunity because the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries would probably cause many public entities to close such areas to public use." (*Id.*)

"The relevant issue for determining whether the immunity applies is the character (improved or unimproved) of the property at the location of the natural condition, not at the location of the injury." (*Id.* at p. 1489.)

Here, as discussed above, the property at issue is naturally occurring growth of plants such as chaparral and other vegetation in a natural habitat in a state park which is a natural condition of unimproved land. (*City of Chico, supra,* 68 Cal.App.5th at p. 362-363.) Therefore, even if this natural condition could be construed as the cause of any injury, section 831.2 precludes liability.

2) <u>The Demurrer Should be Sustained as to the Nuisance Causes of Action Without Leave to Amend</u>

A nuisance cause of action cannot be stated when the claim is based on an alleged dangerous condition of public property. In *Longfellow v. County of San Luis Obispo*, (1983) 144 Cal.App.3d 379, the Second District Court of Appeal held that plaintiffs have no cause of action under a nuisance theory where the action is based on a claim of a defective condition of public property. (*Id.* at p. 384; following *Mikkelsen v. State of California* (1976) 59 Cal.App.3d 621, 624, 630 [in dangerous condition action involving collapsed elevated concrete freeway bridge connector, declined to allow plaintiffs to proceed on a nuisance cause of action].)

In addition, the immunity under Civil Code Section 3482 precludes a nuisance cause of action against the State because it is authorized by statute to operate Topanga State Park. Section 3482 states, "nothing which is done or maintained under the express authority of a statute can be deemed a nuisance." The Second District Court of Appeal in *Avedon*, held that a cause of action for nuisance against the State is precluded by Civil Code section 3482 stating:

> "Respondent is authorized to operate Malibu Creek State Park under Public Resources Code section 5001 et seq. Under section 5003, "The department shall administer, protect, develop, and interpret the property under its jurisdiction for the use and enjoyment of the public." Section 5001 gives the Department of Parks and Recreation control of the state park system. Respondent's operation of the park, including its decision to allow access to the cave and to the road near the cave, fall squarely within its statutory authority. A nuisance claim cannot be predicated on these actions."

(*Avedon*, supra, 186 Cal.App.4th at p. 1345.)

Similarly, here, Topanga State Park is a park in the State Parks system. (Cal. Code Regs., tit. 14, § 4751; citing Pub. Resources Code, § 5019.53.) As such, Parks is authorized to operate

Topanga State Park under Public Resources Code section 5001 which gives it control of the state park system. Thus, Parks' operation of Topanga State Park falls squarely within its statutory authority barring a cause of action for nuisance. Therefore, Civil Code Section 3482 provides an additional basis for sustaining the demurrer to the nuisance causes of action without leave to amend.

In addition, even if a cause of action for nuisance could be stated, which it cannot, the immunities discussed above under Government Code sections 850, 850.2, 845 and 831.2 as precluding the dangerous condition causes of action also preclude the nuisance causes of action. In *Cairns*, the court affirmed the sustaining of a demurrer and dismissal finding that the fire protection service immunities precluded causes of action for dangerous condition of public property and nuisance. (*Cairns, supra*, 62 Cal.App.4th at pp. 332, 334-335; see also *Schooler v. State of California* (2000) 85 Cal.App.4th 1004, 1012 [Nuisance theory of liability against State fails because the existence of an immunity precludes any duty to abate a nuisance].)

IV

CONCLUSION

For the reasons set forth above, the State of California, acting by and through the State of California Department of Parks and Recreation respectfully requests that the court sustain the demurrer in its entirety without leave to amend.

Dated: November 13, 2025

Respectfully Submitted,
ROB BONTA
Attorney General of California
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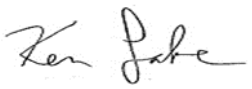

KENNETH G. LAKE
Deputy Attorney General
Attorneys for Defendant State of California, acting by and through the State of California Department of Parks and Recreation

DECLARATION OF SERVICE

RE: Dan Grigsby, et al., v. City of Los Angeles, et al.
***Case No.* 25STCV00832**

I declare: I am employed in the City of Los Angeles, County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 300 South Spring Street, Room 1700, Los Angeles, California 90013. On November 13, 2025, I served the documents named below on the parties in this action as follows:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER BY DEFENDANT STATE OF CALIFORNIA TO THE MASTER COMPLAINT

ROBERTSON & ASSOCIATES, LLP Alexander Robertson, IV, Esq. 32121 Lindero Canyon Road, Suite 200 Westlake Village, California 91361 Email: arobertson@arobertsonlaw.com	FOLEY BEZEK BEHLE & CURTIS, LLP Roger N. Behle, Jr., Esq. Robert A. Curtis, Esq. Kevin D. Gamarnik, Esq. 15 West Carrillo Street Santa Barbara, California 93101 Email: rbehle@foleybezek.com rcurtis@foleybezek.com kgamarnik@foleybezek.com
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(BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Los Angeles, California. I am readily familiar with the practice of the Office of the Attorney General for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

(BY OVERNIGHT DELIVERY) I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery with the GOLDEN STATE OVERNIGHT courier service.

(BY FACSIMILE) I caused to be transmitted the documents(s) described herein via fax number.

X (BY ELECTRONIC MAIL) I caused to be transmitted the documents(s) described herein via electronic mail to the email address(es) listed above.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(FEDERAL) I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Executed on November 13, 2025, at Los Angeles, California.

Sandra Dominguez	Sandra Dominguez
Declarant	Signature