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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

REPLY TO OPPOSITION TO 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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Introduction

The State of California, acting by and through the State of California Department of Parks and Recreation (State Parks) submits the following reply which further shows that the demurrer should be sustained without leave to amend. As a general matter, the Opposition incorrectly cites to and relies on multiple cases involving private entity premises liability cases that were not statutory actions brought under the Government Claims Act. (See e.g. Opp., p. 5:11-24.) However, as discussed in the moving papers, "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 Act is to "confine potential governmental liability to rigidly delineated circumstances." (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991.) For sake of brevity and continuity, this reply follows the order of the arguments set forth in the moving papers.

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

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

The Opposition effectively concedes that State Parks cannot be held liable for the fire started by the arsonist on January 1, 2025, stating "plaintiffs do not allege that the State is liable because it did not stop an arsonist from starting the Lachman Fire on January 1." (Opp. p. 18:14-15.) In this regard, plaintiffs concede that they "have not alleged that the State's property at Topanga State Park was in a dangerous condition *before* January 1." (Opp. p. 6:17-18 (emphasis in the Opposition).)

However, the Opposition also concedes that the reignition on January 7 was a result of rekindled smoldering embers left over from the fire started on January 1. (Opp., p. 7-8, Master Complaint (MC) ¶¶ 77-78.) The Master Complaint refers to this smoldering ember as a "firebrand" that "continued to smolder within the root structure of the vegetation." (MC, ¶ 75; citing the criminal complaint - *U.S.A. v. Rinderknecht*, USCD Case No. 2:25-mj-06103-DUTY, fn. 10, Ex. A to the Req. for Jud. Notice.) In this regard, the criminal complaint refers to the

Palisades fire as 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.)[1] The arsonist was charged with setting "the fire known as the Lachman fire and Palisades fire." (Ex. B to Req. for Jud. Notice.)

Thus, plaintiffs' opposition and allegations show that the rekindling that occurred on January 7 was a continuation of the same fire started on January 1. Therefore, since the fire started by the arsonist on January 1, for which plaintiffs concede State Parks is not liable, continued as the same fire that reignited on January 7, it follows that, pursuant to *Zelig v. County of Los Angeles*, (2002) 27 Cal.4th 1112, the reignition on January 7 is not a dangerous condition for which State Parks can be liable.

It is well established that "public entities generally are not liable for failing to protect individuals against crime." (*Id.* at p. 1126.) The *Zelig* Court emphasized that "liability is imposed only when there is some defect in the property itself and a causal connection is established between the defect and the injury." (*Id.* at p. 1135.) Plaintiffs allege a smoldering ember in the burn scar as the dangerous condition at issue. (Opp., p. 8:15-16.) However, the burn scar and any underground residual ember therein were directly caused by the arsonist starting the fire on January 1. But for the act of arson, there would have been no burn scar or underground residual ember that could have reignited on January 7. Thus, a causal connection between a separate physical defect in the park property itself cannot be established.

The court in *Avedon v. State of California*, (2010) 186 Cal.App.4th 1336, held that third parties wrongfully starting a wildfire in a State Park did not constitute a dangerous condition for which State Parks could be held liable. (*Id*. at p. 1344.) Here, the conduct of the arsonist in

[1] As discussed in the Request for Judicial Notice, consideration of statements in the criminal complaint are appropriate on a demurrer. A court "may consider documents referred to in the complaint" in considering a motion to dismiss in federal court. (*Dreiling v. Am. Exp. Co* (9th Cir. 2006) 458 F.3d 942, 946, fn.2.) "Documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss." (*Branch v. Tunnell* (9th Cir. 1994) 14 F.3d 449, 454.)

starting the fire on January 1 clearly was unrelated to the condition of the Topanga State Park property itself and therefore does not constitute a dangerous condition, as a matter of law.

In addition, the underlying premise of plaintiffs' allegations are that State Parks should have stationed personnel up in the area of the fire from January 1 through 7 to inspect and monitor for possible embers in the root structure of the vegetation that could potentially rekindle. However, "a lack of human supervision and protection is not a deficiency in the physical characteristics of public property." (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1352.) Thus, State Parks' personnel not engaging in this type of fire protection activity cannot be construed as a physical defect in the park property.

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

Even assuming that the rekindling that occurred on January 7 could be construed as a separate fire or condition of the property, the Master Complaint fails to sufficiently allege actual or constructive notice. First, plaintiffs' allegations fail to establish actual notice because it is not enough to show that State Parks' employees may have had a general knowledge that a fire can sometimes occur under the alleged conditions, including the presence of a burn scar and the possibility of a holdover fire in the area. "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.) In *State of California*, the court held that, as a matter of law, a general knowledge that people left hot coals on the beach could not provide actual notice of the particular hot coals on the beach that the 2 1/2 year old plaintiff sat in. (*Id.* at p. 399-400.) Here, general knowledge that an underground ember could have remained somewhere in the eight acre burn area could not provide actual notice of the particular ember that reignited on January 7.

With regard to constructive notice, plaintiffs' allegations are clearly insufficient. As discussed in the moving papers, every fact material to the existence of a public entity's statutory liability "must be pleaded with particularity." (*City of Los Angeles v. Superior Court* (2021) 62 Cal.App. 5th 129, 138.) Plaintiffs have not done so.

The Opposition generally references the entire burn scar area and the possibility of underground embers located in it. However, the existence of a burn scar by itself would not provide constructive notice that a fire would occur. Every wildland fire that occurs in the State of California leaves some form of a burn scar. The potential that there may be an underground ember in a burn scar that may reignite into a fire does not reasonably mean that a rekindling of an ember in a burn scar will occur. To assume otherwise would mean that every wildland fire burn scar throughout the state would constitute constructive notice of a dangerous condition.

With regard to constructive notice of the underground ember that caused the rekindling on January 7, there is no allegation in the Master Complaint that there was any visible indication of any flame, smoke or smoldering embers in the burn scar area from January 2 up until the report of the rekindling of the fire on January 7. In addition, the Los Angeles Fire Department (LAFD) had notified State Parks on January 1 that the fire was fully contained at approximately 4:48 a.m. and that it was extinguished. Furthermore, plaintiffs fail to explain how the existence of smoldering on January 1, the day the fire was started, could provide notice of the burning ember that reignited on January 7, when there is no allegation of any visible indication of smoke or smoldering from January 2 until the reignition on January 7.

In addition, plaintiffs' allegation generally referencing the entire burn scar, which comprised approximately eight acres, as potentially providing notice of the underground ember that reignited on January 7 is excessively vague and overbroad. This point is illustrated by referencing the satellite photo at page 24 of the Master Complaint showing the outline of the January 1 burn scar in red. The origin point of the rekindling on January 7 is shown with a yellow dot to the south of the southern perimeter of the burn scar area. Thus, as an example, the existence of some obvious indication of smoldering or smoke at the northern end of the burn scar could not logically provide constructive notice of the ember that caused the reignition at the southern end of the burn scar on January 7. In other words, plaintiffs must allege that there was some obvious indication of smoke or smoldering in a specific area that could reasonably be construed as causing the rekindling at the yellow dot origin point shown to the south of the southern perimeter of the burn scar. They have not done so.

Furthermore, the Master Complaint fails to allege that the underground ember that caused the reignition on January 7 was obvious. "A claim for constructive notice has *two* threshold elements. A plaintiff must establish that the dangerous condition has existed for a sufficient period of time and that the dangerous condition was obvious. (*Heskel v. City of San Diego* (2014) 227 Cal.App.4th 313, 320, (citation omitted and emphasis in original).) Plaintiffs appear to concede the necessity of making this allegation as the opposition includes the general and conclusory assertion that the burn scar and its smoldering embers constituted an obviously dangerous condition. (See e.g. Opp., p. 8:27-28.) However, the Master Complaint fails to contain this required allegation.

Plaintiffs' citation to *Carson v. Facilities Development Co.*, (1984) 36 Cal.3d 830, for the concept that the question as to whether a dangerous condition could have been discovered by reasonable inspection may present an issue of fact bypasses the required threshold showing that an obvious danger existed. (*Id.* at p. 842; citing *State of California, supra,* 263 Cal.App.2d at p. 400.) In this regard, the *State of California* court held that "the primary and indispensable element of constructive notice is a showing that the *obvious condition existed a sufficient period of time before the accident*." (*Id.* at p. 400, (emphasis in original).) The method of inspection is secondary. (*Id.*) In other words, the issue as to whether was a reasonable inspection system in place does not come into play until and unless an obvious dangerous condition has been properly alleged.

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

Plaintiffs incorrectly assert that the fire protection immunity does not apply to preclude liability for a dangerous condition on a public entity's own property. In *Prokop v. City of Los Angeles,* (2007) 150 Cal.App.4th 1332, the court made clear that a Government Code section 835 action based on a dangerous condition of a public entity's property is subject to any immunity provided by statute to the public entity. (*Id.* at pp. 1337-1338.) The court in *New Hampshire Ins. Co. v. City of Madera,* (1983) 144 Cal.App.3d 298, noted that causes of action premised on a

dangerous condition of property theory under Government Code section 835 are subject to the immunity statutes under sections 850 through 850.4. (*Id.* at p. 305.)

In *Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 330, the Second District Court of Appeal affirmed the sustaining of a demurrer without leave to amend holding that a dangerous condition cause of action based on a closed County owned road that resulted in fire damage to plaintiffs' homes was precluded by the immunity under Government Code sections 850, 850.2 and 850.4. (*Id.* at pp. 333-334.)

Plaintiffs also incorrectly assert that the immunity under sections 850 and 850.2 only applies to services provided while fighting fires. *Cairns* did not involve providing of any fire protection while fighting a fire or otherwise. The plaintiffs alleged that the County failed to repair and reopen the subject road that served as a fire access road, which had been closed for many years, before the subject fire started. (*Id.* at pp. 333, 335.) The court held that, "defendants' failure to repair and reopen a damaged closed road merely to have it available as an alternative fire road is, in these circumstances, a failure to provide fire protection service or fire protection facilities within the immunities of sections 850, 850.2, and 850.4." (*Id.* at p. 336.) (See also *Cochran v. Herzog Engraving* (1984) 155 Cal.App.3d 405, 412-413 [Govt. Code sections 850, 850.2 and 850.4 precluded liability based on pre-fire inspection that failed to find dangerous condition that caused fire].)

Plaintiffs' argument that the immunity under section 850 and 850.2 applies only to active firefighting activity is based on cases such as *Varshock v. Department of Forestry & Fire Protection*, (2011) 194 Cal.App.4th 635, which addressed immunity under Government Code section 850.4 finding this immunity is limited to an act or omission while responding to or combating an actual fire. (*Id.* at p. 643.) However, State Parks is not asserting immunity under section 850.4. *Varshock* did not address the immunity under sections 850 or 850.2.

City and County of San Francisco v. Superior Court, (1984) 160 Cal.App.3d 837, cited by plaintiffs, addressed immunity under section 850.4 and 850, and supports application of section 850 immunity in this case. (*Id.* at p. 842.) There, plaintiffs' real property caught fire and an individual ran approximately 300 feet directly to defendant's firehouse to report the fire.

However, the personnel at this firehouse had left to participate in an improper dinner gathering at another firehouse. This unauthorized absence from the firehouse delayed the response to the fire resulting in extensive damage to the subject real property. (*Id.* at pp. 838-839.)

The court, noting that section 850.4 provides immunity to employees while they are fighting fires, held: "However, even if section 850.4 could be so narrowly construed as to apply to actions only after the firemen reached the fire, the immunity of section 850 would apply for then the acts of the firemen must be viewed as a failure 'to provide fire protection service.'" (*Id.* at p. 842.) Thus, not providing any fire protection by not responding to a fire scene is covered under section 850 immunity.

People ex rel. Grijalva v. Superior Court, (2008) 159 Cal.App.4th 1072, also supports application of the immunity under section 850 in this case. In *Grijalva*, firefighters initially had a brush fire 90 percent contained but failed to douse the flames completely and instead began to demobilize its firefighting resources resulting in the fire later burning out of control. (*Id.* at pp. 1075-1076.) The *Grijalva* court ordered that the underlying motion for judgment on the pleadings should have been granted without leave to amend because the immunity statutes preclude liability based on the fire protection service, personnel, equipment or other fire protection facilities, "they provide, *or do not provide*." (*Id.* at p. 1078; citing Gov.Code, §§ 850, 850.2, 850.4 (emphasis added).) Thus, not providing fire protection by deciding not to remain at a fire scene to monitor for a possible rekindling is covered by section 850 immunity.

In addition, in attempting to distinguish *Cochran*, plaintiffs incorrectly assert that State Parks is relying on the inspection immunity of Government Code section 818.6, which it is not. In fact, the *Cochran* court held that the "sweeping" language of Government Code sections 850, 850.2 and 850.4 also precluded liability:

> "Aside from the immunity provided by Government Code section 818.6, the trial court cited and relied on three other immunity statutes: Government Code sections 850, 850.2 and 850.4. The language of these provisions is sweeping, and they have been broadly construed by the courts in this state to provide immunity under circumstances quite similar to those before us. We find that these statutes are applicable here, and provide further immunity for the City in the instant case."

(*Cochran*, supra, 155 Cal.App.3d at pp. 412-413.)

The *Cochran* court further noted that, "Government Code sections 850 and 850.2 protect public entities from liability by providing governmental immunity 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 clear inference from this statement, consistent with the Law Revision Comment to section 850, is that the immunity under section 850 precludes liability when a public entity has not undertaken to provide fire protection.

Furthermore, the allegations upon which the *Cochran* court determined that immunity under sections 850 and 850.2 precluded liability are similar to the asserted bases for liability against State Parks in this case. The *Cochran* plaintiffs asserted that the City of San Mateo had a duty to inspect the location that burned in order "to correct or remedy any hazardous conditions liable to cause fire, and to require the use of adequate protective measures, including suitable fire detecting and extinguishing devices; and that the breach of these duties subjected it to liability." (*Id.* at p. 410.)

Similarly, here, plaintiffs allege that State Parks had a duty to inspect the burn scar area to correct or remedy a hazardous condition in the form of an underground ember that was liable to cause fire, and to use adequate protective measures, including suitable fire detecting devices such as a thermal imaging device, and that the breach of these duties subjects State Parks to liability. However, *Cochran* makes clear that liability is precluded under section 850 based on these allegations.

Furthermore, plaintiffs' strained effort to analogize the facts of *Vedder v. City of Imperial*, (1974) 36 Cal.App.3d 654, to the facts presented here lacks merit. Comparing the storage of large quantities of highly combustible gasoline at an airport without special equipment for gasoline fires to undeveloped land with naturally growing chaparral and vegetation in a State Park defies logic and common sense. As discussed in the moving papers, the *Cairns* court correctly distinguished *Vedder* from the facts in that case which apply equally to the facts in this case. (*Cairns, supra,* 62 Cal.App.4th at p. 336.)

An additional distinguishing factor from *Vedder* is that, in that case, there was no means available at the County airport where the fire occurred to control a gasoline fire. (*Vedder,*

*supra,*36 Cal.App.3d at p. 659.) Here, there were means to control the subject brush fire in that LAFD handled the fire response, including mop-up, and advised that the fire was extinguished. (MC, ¶ 371, p. 115:8.)[2] Here, plaintiffs essentially allege that State Parks should have provided additional fire protection by inspecting the burn scar area after LAFD completed its work to locate the underground ember that caused the reignition on January 7.

Plaintiffs attempt to distinguish *Cairns* by asserting, without any authority, that this case involves "the smoldering embers in the burn scar- [that] actually started and caused the Palisades Fire, rather than merely upsetting firefighting efforts." (Opp. p. 15:25-28.) The plain language of section 850 and 850.2 contain no such limitation and such an asserted interpretation is clearly inconsistent with the "broad" immunity conferred by section 850 and 850.2. The *Cairns* court noted that "these sections provide for a *broad* immunity from liability for injuries resulting in connection with fire protection service." (*Id.* at p. 335, (emphasis in original).)

> "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."

(*Id.*; quoting Gov. Code, § 850, Law Revision Commission Comments, (emphasis added).)

Plaintiffs also attempt to distinguish *Puskar* v. *City and County of San Francisco*, (2015) 239 Cal.App.4th 1248, by asserting, without recitation to any authority, that the fire protection immunities are limited only to decisions that make firefighting more difficult or impede the response to a fire. (Opp., p. 16:17-19.) However, there is no case law remotely suggesting that fire protection immunity is limited to actions that impede the response to a fire or make fire fighting more difficult. As discussed above, this assertion is entirely inconsistent with the plain language of the statutes and applicable case law which makes clear that the fire protection immunity under section 850 applies where no fire protection is provided at all.

[2] As discussed in the moving papers, the area of the subject fire was within a local agency responsibility area. (See Pub. Resources Code §§ 4125-4127.)

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

In addition, the *Puskar* court's criticism of the *Vedder* decision is well taken. In this regard, the *Vedder* court's incorrect statement that these immunity statutes "must be strictly construed" is 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).) That the *Vedder* court incorrectly construed the immunity statutes is confirmed by the California Supreme Court decision in *Teter v. City of Newport Beach*, (2003) 30 Cal.4th 446. In *Teter*, the plaintiff asserted that, under the Government Claims Act, liability is the rule and immunity the exception. The *Teter* Court rejected this assertion stating that "plaintiff is quite wrong about that." (*Id*. at p. 451.) The court reiterated its statement in *Zelig* that the intent of the Act is "not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances." (*Id.*) In this regard, at noted by the *Cairns* court, immunity provisions will, "as a general rule prevail over all sections imposing liability." (*Cairns, supra,* 62 Cal.App.4th at p. 334.)

Plaintiffs also rely on *Pittam v. City of Riverside*, (1932) 128 Cal.App. 57, and *Osborn v. City of Whittier*, (1951) 103 Cal.App.2d 609, but both cases are distinguishable based on *Stang v. City of Mill Valley,* (1952) 38 Cal.2d 486, because, contrary to the facts in *Pittam* and *Osborn*, the public entity defendant in *Stang* did not create the fire causing the damage to plaintiffs' property. (*Id.* at p. 489.) In *Pittam*, the City of Riverside operated a dumping and burning ground for trash where it intentionally burned trash in a "burning area." (*Pittam, supra,* 128 Cal.App. at p. 58.) In *Osborn*, the City of Whittier operated a rubbish disposal dump wherein it intentionally burned

rubbish on a continual basis. (*Osborn, supra,* 103 Cal.App.2d at p. 612.) The *Stang* court affirmed the sustaining of a demurrer finding no liability under the Public Liability Act:

> "As the maintenance and operation of a fire department is so distinguished as a governmental function for the public good, it is 'well settled that a municipal corporation is not responsible for the destruction of property within its limits by a fire which it did not set, merely because, through the negligence or other default of the corporation or its employees, the members of the fire department failed to extinguish the fire."

(*Stang, supra,* 38 Cal.2d at pp. 489-490.) The *City and County of San Francisco* court referenced this passage from *Stang* as a basis for no liability prior to the enactment of the Government Claims Act in 1963 and proceeded to evaluate the applicable statutory immunities after the enactment of the Act. (*City and County of San Francisco, supra,* 160 Cal.App.3d at p. 840.) As discussed above, the court found that the immunity of section 850 precluded liability based on the failure of fire personnel to respond to the subject fire due to leaving their firehouse which "must be viewed as a failure to provide fire protection service." (*Id.* at p. 842.)

McKay v. State of California, (1992) 8 Cal.App.4th 937, does not apply to the facts of this case as it addressed recoverable damages under Health and Safety Code section 13007 that permits recovery for damages due to a negligently set fire such as a controlled-burn fire that damages adjacent property. *McKay* did not involve a dangerous condition or nuisance cause of action. (*Id.* at p. 938.)

With regard to the police protection immunity under Government Code section 845, plaintiffs assert that, based on their concession that State Parks cannot be liable for the arsonist starting the fire on January 1, this immunity does not apply. However, as discussed above, plaintiffs' allegations indicate that the fire that was started by an arsonist on January 1 was never completely extinguished due to an underground ember that reignited on January 7. Thus, the criminal arson was continuing and therefore the failure to discover this ongoing crime would be covered by the police protection immunity.[3]

[3] State Parks Rangers are peace officers under Penal Code section 830.2, subdivision (f) and Public Resources Code section 5008.

In addition, to the extent the allegations that State Parks personnel should have gone up to the fire area after January 1 to recheck the work of the LAFD by searching with a thermal imaging device looking for the underground ember that caused the reignition on January 7, this would involve State Parks' Rangers and therefore the additional immunity for police protection would also apply.

Plaintiffs' Opposition also asserts that State Parks should have closed Topanga State Park in the area of the January 1 burn scar. (Opp. p. 4:3-5, fn. 5.) There is no such allegation in the Master Complaint. Plaintiffs also misstate the section from the Department Operations Manual on which they rely by omitting the first sentence which states: "All or a portion of a park unit *may* be closed when an unwanted wildland fire is threatening or burns on Department lands." (State Parks Operations Manual, Natural Resources, § 0313.2.1.3, p. 03-48[4], (emphasis added).) Furthermore, plaintiffs have not and cannot explain how not closing the Park relates to providing fire protection service by searching with a thermal imaging device for the underground ember that reignited on January 7. Nevertheless, even if a decision not to close the Park could be construed as a basis for liability, said decision would be covered by the police protection immunity.

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

State Parks' argument that a nuisance cause of action cannot be stated when the claim is based on an alleged dangerous condition of public property is based on two Second District Court of Appeal cases, *Longfellow v. County of San Luis Obispo*, (1983) 144 Cal.App.3d 379 and *Mikkelsen v. State of California* (1976) 59 Cal.App.3d 621. The *Longfellow* court 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 stating: "We deem it proper in this case where the action is based on a claim of a defective condition of public property to follow the reasoning of the

[4] <https://www.parks.ca.gov/pages/21299/files/DOM%200300%20Natural%20Resources.pdf>

Mikkelsen court and find the plaintiffs have no cause of action under a nuisance theory." (*Id.* at p. 384, following *Mikkelsen*.)

The *Mikkelsen* court noted that none of the cases that had allowed a nuisance action to proceed against a public entity at that point in time, involved a dangerous condition cause of action. (*Mikkelsen, supra,* 59 Cal.App.3d at p. 627.) The court declined to allow the plaintiffs to proceed on a nuisance cause of action, in addition to a dangerous condition cause of action, because to do so would thwart the legislative purpose of the dangerous condition immunities by allowing maneuvering with the rules of pleadings and procedure in pleading on a theory of nuisance or negligence. (*Id.* at p. 630 [Design immunity under Government Code section 830.6 cannot be avoided by pleading a cause of action in nuisance.].)

However, plaintiffs argue that these Second District Court of Appeal holdings should not be followed based on a Third District Court of Appeal case, *Paterno v. State of California,* (1999) 74 Cal.App.4th 68, and a First District Court of Appeal case, *Pfleger v. Superior Ct.*, (1985) 172 Cal.App.3d 421. The *Paterno* court, relying on *Pfleger* disagreed with *Longfellow* calling it "an anomalous decision." (*Paterno, supra,* 74 Cal.App.4th at pp. 103-104.) The *Paterno* court did not distinguish *Longfellow*.

Thus, there is a conflict on this issue between districts. "As a practical matter, a superior court ordinarily will follow an appellate opinion emanating from its own district even though it is not bound to do so." (9 Witkin, Cal. Proc. 6th Appeal § 518 (2025), quoting *McCallum v. McCallum* (1987) 190 Cal.App.3d 308, 315, fn 4.) In addition, State Parks submits that the court should follow *Longfellow* and *Mikkelsen* as they are the better reasoned opinions. In this regard, numerous cases addressing dangerous condition cases have held that, "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, supra,* 161 Cal.App.4th at p. 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.)

In addition, the immunity under Civil Code Section 3482 precludes a nuisance cause of action against State Parks because it is expressly authorized by statute to operate Topanga State

Park. Here, the underlying premise of plaintiffs' allegations are that State Parks' allowance of naturally occurring growth of chaparral and other vegetation in its operation of Topanga State Park constitutes a nuisance. In this regard, the specific statutory authority for State Parks to operate the Park states that:

> "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.) "Each state park shall be managed as a composite whole in order to restore, protect, and maintain its native environmental complexes to the extent compatible with the primary purpose for which the park was established." (*Id.*) Thus, State Parks is authorized by statute to operate the Park which includes specific authorization to allow naturally occurring growth of chaparral and other vegetation in its operation of the Park.

In *Avedon*, as alleged here, the nuisance claim was premised on State Park's "maintaining a dangerous condition of public property which allowed a severe fire risk to persist." (*Avedon*, supra, 186 Cal.App.4th at p. 1345.) The *Avedon* court held that a nuisance cause of action against State Parks was precluded by Civil Code section 3482 because it was authorized by statute to operate Malibu Creek State Park wherein it was, pursuant to Public Resources Code section 5001 et seq., to administer, protect, develop, and interpret the property under its jurisdiction for the use and enjoyment of the public. (*Id.*) The court concluded that State Parks' allowing access to the cave where the fire started and the road near the cave, fell squarely within its statutory authority to operate the park and therefore a nuisance claim could not be predicated on these actions. (*Id.*)

Similarly, here, State Parks' allowing naturally occurring growth of chaparral and other vegetation in its operation of Topanga State Park falls squarely within its statutory authority to operate the park precluding a nuisance claim. (See also *Pekarek v. City of San Diego* (1994) 30 Cal.App.4th 909, 917-918 [operation of ice-cream trucks on city's streets permitted by ordinance cannot give rise to a nuisance claim].)

In addition, even if a cause of action for nuisance could be stated, which it cannot, the immunities discussed above as precluding the dangerous condition causes of action also preclude the nuisance causes of action. (*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].)

Conclusion

For the reasons set forth above and in the moving papers, State Parks respectfully requests that the court sustain the demurrer in its entirety without leave to amend.

Dated: January 15, 2026

Respectfully Submitted,
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DECLARATION OF SERVICE

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 January 15, 2026, I served the documents named below on all interested parties in this action as follows:

1. **REPLY TO OPPOSITION TO DEMURRER BY DEFENDANT STATE OF CALIFORNIA TO THE MASTER COMPLAINT**

BY ELECTRONIC SERVICE THROUGH THE CASE ANYWHERE SYSTEM: I caused service of such documents through the Case Anywhere system. The court has authorized electronic service in this action through Case Anywhere, the designated online electronic service provider in this case.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 15, 2026.

/s/ Sandra Dominguez
Sandra Dominguez