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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

PALISADES FIRE LITIGATION

DAN GRIGSBY, et al.,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED CASES

Lead Case No. 25STCV00832

INDIVIDUAL PLAINTIFFS' OPPOSITION TO DEMURRER BY THE STATE OF CALIFORNIA

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

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

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

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I. INTRODUCTION

All landowners in California have a non-delegable duty to maintain their property in a reasonably safe condition that will not harm others. This applies to private landowners and public landowners, including the State of California and its State Parks division (collectively, the "State"). In its Demurrer, the State disclaims its duties as a landowner, citing the immunities set forth in the Government Claims Act (Gov. Code, § 810 et seq.). But the law in California is that governmental immunity statutes "should not be applied to allow a public entity to escape responsibility for damages resulting from its failure to provide fire protection on *property which it owns and manages itself*, particularly where it has permitted a dangerous fire condition to exist on the property." *Vedder v. County of Imperial* (1974) 36 Cal.App.3d 654, 660-61 (emphasis added). Indeed, Government Code § 835 codifies the State's "duty *not* to maintain public premises in a dangerous condition." *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1133 (emphasis added).[1] Moreover, Government Code § 818.6 creates a carve-out for the inspection immunity, making clear that such immunity does not apply to land owned by the State. And there is a longstanding common law duty of all landowners to reasonably manage their property so as not to allow a fire to escape from their land.[2] All of these duties are imposed on the State as landowner, and none have anything to do with "the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities." Gov. Code, § 850.2. These duties exist to prevent exactly what happened here; it is a well-known phenomenon that one fire can lead to a future fire if the land is not properly inspected for embers burning underground.

Plaintiffs have properly alleged that the State permitted a dangerous fire condition (a burn

[1] See also *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 809 (public entity owes a duty on land when "a private owner under similar circumstances would owe the persons using the premises a duty of care."); *Ducey v. Argo Sales Co.* (1979) 25 Cal.3d 707, 716 ("[T]he entity's liability may be predicated on its failure to take protective measures to safeguard the public from dangers that may not necessarily be of the entity's own creation").

[2] Indeed, the California State Parks' own Operations Manual expressly requires that in the case of a wildfire that *has burned* on State Park land, the State is required close the area and keep it closed until appropriate State representatives—not the LAFD, contractors, or third parties—inspect the land to rectify any public safety issues.

scar with smoldering embers) to exist on public property owned and managed by the State, and that that dangerous condition was the cause of the Palisades Fire. Nevertheless, the State suggests that it is immune from this lawsuit solely because the dangerous condition may have been created by an arsonist and because damages were caused by a fire. Neither argument is supported by law. The State's overbroad claim of immunity is unsupported by the statutory language, legislative history or case law, and therefore must be rejected. The allegations in the Individual Plaintiffs' Master Complaint ("MC") are more than adequate to overcome the State's Demurrer. The State's Demurrer should be overruled and Plaintiffs' claims allowed to proceed.

II. LEGAL STANDARD AND SYNOPSIS OF FACTUAL ALLEGATIONS

"In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." Code Civ. Proc., § 452. The Court must "give the complaint a reasonable interpretation, reading it as a whole and viewing its parts in context." *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1501 (citations omitted). Our Supreme Court has reiterated that to sustain a demurrer "'there must be an obvious failure of the pleadings to state a cause of action[.]'" *Green v. Obledo* (1981) 29 Cal.3d 126, 144 (quoting *Terry Trading Corp. v. Barsky* (1930) 210 Cal. 428, 438). For purposes of ruling on a demurrer, material facts properly pleaded in the complaint must be taken as true. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.[3] With that in mind, the facts alleged in the MC in support of the first four causes of action against the State can be summarized as follows:

At 12:07 a.m. on January 1, 2025, a brush fire was reported near Skull Rock on the Temescal Ridge Trail in Pacific Palisades. The New Year's Eve fire was named "the Lachman Fire." (MC, p. 17, ¶ 62.) At 4:48 a.m., LAFD firefighters reported that they had completed a hose line around the fire and had it "fully contained." (MC, pp. 17-19, ¶¶ 63-65.)

The Lachman Fire burned land in Topanga State Park, public property owned and managed

[3] While the Court may take judicial notice of the fact that a criminal complaint was filed in the action *United States of America v. Jonathan Rinderknecht*, USDC Case No. 2:25-cr-833-AH, as alleged at MC, p.23, ¶¶ 75-76, the Court may not accept as true of any of the factual allegations set forth in that complaint or any related filings. *See Day v. Sharp* (1975) 50 Cal.App.3d 904, 914; *Fremont Indemnity Co v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-15.

by the State of California. (MC, pp. 23-24, ¶¶ 74-76; p. 114, ¶¶ 366-367.) State Parks was notified of the fire shortly after it occurred on January 1, 2025. (MC, p. 19, ¶ 67.)

From January 3 through January 6, 2025, the National Weather Service ("NWS") issued repeated warnings of a "life-threatening, destructive, widespread windstorm" with "extreme" and "particularly dangerous" fire conditions expected to arrive in Los Angeles County on Tuesday January 7, 2025. (MC, pp. 1-14, ¶¶ 51-56.)

The State of California was on notice that the impending high winds, in combination with severe drought conditions, lack of brush clearance, and the absence of prepositioned resources, made the burn scar and unextinguished embers from the Lachman Fire extremely dangerous, posing a significant risk of rekindling into a new fire on its property on January 7, 2025. (MC, pp. 14-16, ¶¶ 57-61; pp. 25-26, ¶¶ 79-84; pp. 114-115, ¶¶ 367-371.)

Nevertheless, despite notice of the extremely dangerous conditions on its land, the State of California took no affirmative steps to protect against or mitigate the risk of a new fire igniting on January 7, 2025. (MC, pp. 19-21, ¶¶ 68-70; pp. 114-115, ¶¶ 367-371.)

Members of the public who hiked through the Lachman Fire burn scar reported seeing smoke still smoldering from the ground on January 1, 2025 after firefighters had left the area. (MC, p. 21, ¶ 70).[4]

When the winds began to pick up on the morning of January 7, 2025, the embers from the Lachman fire rekindled and fueled a new fire, known as the "Palisades Fire." (MC, p. 25, ¶ 78.) The Palisades Fire ultimately destroyed 6,837 homes and businesses, damaged another 973 structures, killed at least thirteen (13) people, and caused injuries to civilians and firefighters. As many as 5,058 single family homes, 135 multi-family residences, 361 mobile homes, 101

[4] Indeed, since the filing of the MC, the *Los Angeles Times* reported that another hiker videotaped smoke smoldering up from the ground in the Lachman Fire burn scar on January 2. https://www.latimes.com/california/story/2025-10-26/could-the-state-have-done-more-to-prevent-the-palisades-fire. Further, the *Los Angeles Times* has also reported that firefighters were ordered to leave the smoldering burn scar on January 2 before a "mop up" had been completed. https://www.latimes.com/california/story/2025-10-30/firefighters-ordered-to-leave-smoldering-palisades-burn-site.

commercial buildings, 51 school structures and 6 church structures were destroyed by the Palisades Fire. (MC, p. 1, ¶ 1.)

The State did not close Topanga State Park, inspect its property and/or monitor the situation, such as using thermal imaging cameras at the Lachman Fire burn scar after the fire was reportedly contained on January 1 until January 7 when embers rekindled and ignited the Palisades Fire.[5] (MC, p. 19, ¶ 68.)

The Palisades Fire was ignited as a direct and proximate result of a foreseeable danger — rekindled smoldering embers left over from the Lachman Fire — on public property owned and managed by the State of California. (MC, pp. 23-24, ¶¶ 74-77.)

III. ARGUMENT

A. The Government Must Not Maintain Its Property in a Dangerous Condition.

"Government Code § 835[6] imposes a duty on public entities not to maintain property in a 'dangerous condition.'" *Zelig, supra*, 27 Cal.4th at 1134. A dangerous condition is defined in

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[5] The State had a non-delegable duty to close that portion of Topanga State Park burned in the Lachman Fire "until appropriate Department staff [had] inspected the area and rectified any public safety, property or resource protection issues." *See* State of California Department of Parks and Recreation Operations Manual, Natural Resources, § 0313.2.1.3 https://www.parks.ca.gov/pages/21299/files/DOM%200300%20Natural%20Resources.pdf

[6] Section 835 provides: "a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that . . . (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." *See also* CACI No. 1100.

Section 835.2 states: "(a) 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. (b) A public entity had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 835 only if the plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character. On the issue of due care, admissible evidence includes but is not limited to evidence as to: (1) Whether the existence of the condition and its dangerous character would have been discovered by an inspection system that was reasonably adequate (considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise) to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property. (2) Whether the public entity maintained and operated such an inspection system with due care and did not discover the condition."

Government Code § 830 as "a condition of property that creates a substantial . . . risk of injury." Liability may be imposed on the public entity "when there is some defect in the property itself and a causal connection is established between the defect and the injury." *Zelig*, 27 Cal.4th at 1135. "A public entity may be held liable for a 'dangerous condition' of public property only if it has *acted unreasonably* in creating or failing to remedy or warn against the condition. . . ." *Metcalf v. County of San Joaquin* (2006) 42 Cal.4th 1121 (quoting Cal. Law Revision Com. com., reprinted at West's Ann. Cal. Gov. Code foll. § 830 (2025 ed.), p. 298) (italics added by the Supreme Court); *see also Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, 653 (duty to warn of a dangerous road condition); *Baldwin v. State of California* (1972) 6 Cal.3d 424, 436-37 (liability is determined based on the reasonableness of the action or inaction).

This rule is in accord with the longstanding duty of landowners to "maintain land in their possession and control in a reasonably safe condition." *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 674. "[T]he duty of care encompasses a duty to avoid exposing persons to risks of injury that occur off site if the landowner's property is maintained in such a manner as to expose persons to an unreasonable risk of injury offsite." *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158 (quoting *Barnes v. Black* (1999) 71 Cal. App. 4th 1473, 1478). "The general rule is stated as follows: 'A possessor of land is required to make reasonable use of his premises which causes no unreasonable harm to those in the vicinity, either by reason of the character of the use itself or because of the manner in which it is conducted.'" *Reid & Sibell, Inc. v. Gilmore & Edwards Co.* (1955) 134 Cal.App.2d 60, 66 (quoting *Prosser on Torts* at 601). The California Supreme Court has "found that landowners have a duty to prevent hazardous natural conditions arising on their property from escaping and causing injury to adjacent property." *Kesner*, *supra*, 1 Cal.5th at 1158 (citing *Sprecher v. Adamson Cos*. (1981) 30 Cal. 3d 358, 368). Section 835 imposes similar liability on the State.

The Master Complaint alleges all the necessary elements of a claim based on a dangerous condition on government property. *See* CACI No. 1100. The burn scar and smoldering embers within it were located on State property. Burn scars are widely known to pose a risk of rekindling, especially in combination with the dry, windy conditions and unmaintained vegetation, that existed

on and leading up to January 7, 2025. As the MC alleges, the California State Fire Training Student Manual 2013 for Wildlife Urban Interface Environment states: "Remember it is common that hot material could still be found on large fires months after the fire was controlled." (MC, p. 25, ¶ 79.) State officials were notified of the existence of multiple hotspots on January 1, 2025. Yet, despite having multiple warnings of an impending extreme wind event, dry conditions, the lack of any nearby fire protection, and reports of smoke smoldering on its land, over the next six days the State did nothing to lessen the risk of a new fire starting, nor did it take any steps to close the area of its land burned in the Lachman Fire. At the core of the State's fault, it failed to inspect its land or remedy the public safety hazard posed by smoldering embers.[7] The burn scar did in fact rekindle and start a new fire on January 7, leading to the devastating fire that killed at least 13 people and destroyed thousands of homes.

B. <u>A Dangerous Condition May Be Created By a Third Party.</u>

The State spends a considerable portion of its argument suggesting that it cannot be held liable for a dangerous condition created by an illegal act of a third party. There is no legal support for this novel theory, and, like the public entity defendant in *Vedder*, the State's "argument misconstrues the theory of [P]laintiffs' pleading." *Vedder*, *supra*, 36 Cal.App.3d at 660.

As noted above, Plaintiffs have not alleged that the State's property at Topanga State Park was in a dangerous condition *before* January 1. Rather, the dangerous condition was permitted to exist after January 1 when the Lachman fire was reported to be fully contained and then abandoned, with the full knowledge of State Parks officials. (MC, p. 114, ¶ 367.) The State allowed the ground to continue to smolder with debris and embers and to rekindle six days later. (MC, pp. 114-15, ¶¶ 372, 376.) "Most obviously, a dangerous condition exists when public property is physically damaged, deteriorated, or defective. . . ." *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148. Here, the State's land was physically damaged and deteriorated by the Lachman Fire burn scar and the smoldering embers. These smoldering embers, which the State allowed to remain on its land for days after the Lachman Fire, constituted a dangerous condition of public

[7] As required by the State's own Operations Manual. *See supra* footnote 8.

property.

There is no California case suggesting the defendant must be solely responsible for the creation of the dangerous condition, nor even that the defendant must be solely responsible for the damages. The State's liability is rooted in notice of the dangerous condition and the State's failure to take reasonable corrective. *See* CACI No. 1100 (essential factual elements for dangerous condition of property); *see also McGillivray v. Hampton* (1919) 39 Cal.App. 726, 728 ("a person is liable not only where he negligently sets out fire on his own ground, but also for negligently suffering any fire to extend beyond his own land." (internal quotation marks omitted)).

Indeed, in *Vedder*, the court held: "One who negligently stores gasoline and other highly combustible chemicals on his property, or knowingly permits such negligent storage, may be liable to others for a fire-incurred loss even though the fire was actually started by the negligent conduct of others. 'If an injury is produced by the concurrent effect of two separate wrongful acts, each is a proximate cause of the injury. . . .'" *Vedder*, *supra*, 36 Cal.App.3d at 660, (citing *Taylor v. Oakland Scavenger Co.* (1938) 17 Cal.2d 594, 602). Case law explains why this Court must reject the State's position in this respect. In *Reid & Sibell, supra*, 134 Cal.App.2d 60, the defendant argued it could not "be held liable for merely contributing to the spread of a fire not caused, in the first instance, by its act or omission." *Id*. at 65. The court rejected this argument in the face of evidence supporting "that the large quantity of paint thinner kept in the basement by [defendant] substantially increased the difficulty of fighting the fire; caused it to flare up again and again after being under control; and caused it to spread." *Id*. at 64-65. Just as the defendant in *Reid & Sibell* "was negligent as creating an unreasonable risk to the other occupant of the building," Plaintiffs sufficiently allege that the State's total failure to monitor its land "created a reasonably foreseeable risk" that embers would "smolder, burn and re-ignite from a holdover fire on its property." *Compare id*. at 65, *with* MC, p. 115, ¶ 375; *see also* 22 Am.Jur. 603 ("If the owner of premises allows them to remain in such a condition as to constitute a danger to other property in case of fire, this negligence will make him liable for damages done to such other property by an accidental fire starting on his premises, although he has no connection with its origin."); *accord Arnhold v. United States* (9th Cir. 1960) 284 F.2 326 (railroad had non-delegable duty to prevent spread of fire, even if started by strangers).

The State mistakenly relies on *Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, which is readily distinguishable. In *Cerna,* the court held, after reviewing all the evidence on summary judgment, that an ordinary traffic intersection was not in a dangerous condition. "The trial court… concluded that the risk created by the identified features of the intersection was of such a minor, trivial, or insignificant nature that no reasonable person would conclude that the condition created a substantial risk of injury." *Id.* at 1348. This case presents the exact opposite scenario. No reasonable person could ever conclude that the risk of the unattended burn scar and smoldering embers rekindling on a day where winds posed an extreme fire danger was so "minor, trivial, or insignificant" that it did not pose a substantial risk of injury. The allegations in paragraphs 79-83 of the MC, including the California State Fire Training Student Manual, make that clear. In any case, the issue presents myriad questions of fact and is clearly not one that can be determined against Plaintiffs on demurrer. *Cf. Fackrell v. City of San Diego* (1945) 26 Cal.2d 196, 206 ("Whether a given set of circumstances creates a dangerous or defective condition is primarily a question of fact.").

C. <u>Smoldering Embers in the Burn Scar on State Land Was the Dangerous Condition That Caused the Palisades Fire.</u>

As alleged in the MC, the burn scar from the Lachman Fire on January 1, 2025, created a glaring defect in the Topanga State Park property which posed a threat of starting a new fire when winds increased on January 7. (MC, pp. 114-115, ¶¶ 369-370.) Numerous cases have affirmed liability when a fire believed to have been extinguished is allowed to rekindle and spread to neighboring properties. *See, e.g., Richter v. Larabee* (1933) 136 Cal.App. 16 (grass fire put out, still smoking, then rekindled into new fire); *Kennedy v. Minarets Western Ry. Co.* (1928) 90 Cal.App. 563 (smoldering log covered with dirt rekindled and started new fire after two or three days); *Young v. San Joaquin Light Power Co.* (1927) 83 Cal.App. 585 (fire left smoldering spread to rubbish pile and started a new fire); *Paiva v. California Door Co.* (1925) 75 Cal.App. 323 (fire left smoldering in a tree stump for a day or two sparked new fire); *McGillivray v. Hampton* (1919) 39 Cal.App. 726 (hay fire put out, left smoldering, rekindled). The burn scar, and its smoldering embers, therefore constituted an obviously dangerous condition, a defect in the property for which

there is no immunity.

Cases in which the proximate cause of the fire was not smoldering embers in a burn scar are easily distinguishable. For example, in *Avedon v. State of California* (2010) 186 Cal.App.4th 1336, the plaintiffs alleged that the State was responsible for a wildfire ignited by a bonfire inside a cave in Malibu State Park, arguing that the State "maintained its property in a dangerous condition by allowing easy and unrestricted vehicular access to" the cave. *Id*. at 1341. The court applied the rule that "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*. (emphasis added) (quoting *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 810). Because there was "no inherent defect in the property itself," plaintiffs could not "allege facts establishing a causal connection between the defect and the injuries sustained," precluding "a cause of action for dangerous condition of public property." *Id*. at 1342, 1344.

By contrast, a claim for dangerous condition of government property resulting in a fire can be maintained if the dangerous condition was a known defect — in in this case, a burn scar with visible smoldering embers from a fire — which proximately caused the fire on the property. The language of the *Cerna* opinion cited by the State (*see* Demurrer at p. 14) is completely congruent with this principle. "A dangerous condition exists when public property is physically damaged, deteriorated or defective. . . ." *Cerna*, *supra*, 161 Cal.App.4th at 1347.

D. <u>State Parks Knew and Should Have Known About the Dangerous Condition Within the Burn Scar on Its Land.</u>

The MC alleges that the State had actual and constructive notice of the Lachman fire and the danger it posed on January 1, 2025, six days before the start of the Palisades Fire. (MC, pp. 19, ¶ 66-67, p. 115, ¶¶ 371-73.) Indeed, the MC even cites the State's own "incident Log indicating that CA STATE PARKS was notified by telephone of the Lachman Fire, Incident #42 on January 1, 2025 at 00:27:14." (MC, p. 19, ¶ 67; *see also* MC, pp. 115-16, ¶ 376 ("The State and its employees had actual and constructive knowledge of the dangerous condition in time to have taken measures to protect against it. Specifically, the employees of the State knew or should have known of the 'Particularly Dangerous Situation' and 'Extreme Fire Conditions' forecasted by the NWS days prior

to January 7, 2025 and that any embers not fully extinguished from the Lachman fire could start a dangerous wildfire.").)[8]

Plaintiffs also allege that the State was or should have been aware of the great danger posed by the burn scar from the Lachman Fire, citing various experts as well as a California State Fire Training Manual. "When the fire has been contained, the real work begins. If not all the material near the fireline is extinguished, you run the risk of the fire rekindling and escaping." (MC, pp. 25-26, ¶¶ 79-84.) Nothing further is required at this pre-discovery, pleading stage. *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795 (plaintiff's allegation that "RTD knew assaults regularly occurred on this bus route" was sufficient to establish duty and no immunity requiring reversal of judgment of dismissal on demurrer). The cases cited by the State are readily distinguishable and were in any event decided only after discovery and the presentation of evidence on summary judgment or after trial. In *State of California v. Superior Court of San Mateo County* (1968) 263 Cal.App.2d 396, a toddler wandered into a fire pit. With regard to actual notice, there was no evidence presented "that the employees had knowledge of the particular dangerous condition in question." *Id*. at 399. Further, "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 399-400; *see also Sambrano v. City of San Diego* (2001) 94 Cal. App. 4th 225 (fire ring was not itself a dangerous condition and city had no notice of any danger). By contrast, the exhaustive Master Complaint already pleads both the knowledge and notice conditions.

Indeed, the cases cited by the State illustrate that the question of knowledge, actual or constructive, cannot be fairly decided on demurrer. In *Heskel v. City of San* Diego (2014) 227 Cal.App.4th 313, unlike in this case, the plaintiff did not even contend that the City had actual notice of the protruding metal post that tripped plaintiff. On the issue of constructive notice, the City presented several uncontroverted declarations from workers who had been in the area and had not

[8] The State recently admitted it had a representative at the Lachman Fire burn scar on January 1. https://x.com/GovPressOffice/status/1995589628699836922 ("State Parks never said, in court or otherwise, that the department did not have a representative at the Lachman Fire burn scar on Jan. 1.").

noticed the condition, "creat[ing] a reasonable inference that the condition was not obvious." *Id*. at 318. In the absence of any countervailing evidence, the court granted summary judgment. *Id*. at 321.

Strongman v. County of Kern (1967) 255 Cal.App.2d 308 concerned a nonsuit granted after trial because the plaintiff failed to present evidence "proving the condition that caused plaintiff's injuries, the missing plank, existed for any length of time prior to the accident." *Id*. at 314. Again, the court did not address actual notice, as the issue was "the sufficiency of evidence relied upon to prove constructive notice[.]" *Id*. at 313. And the trial court decided the issue after discovery and the presentation of evidence at trial, not on demurrer.

The State fails to acknowledge that "[t]he questions of whether a dangerous condition could have been discovered by reasonable inspection and whether there was adequate time for preventive measures are properly left to the jury." *Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 843 (collecting cases). "Appellate courts have upheld jury verdicts finding constructive notice and imposing liability on governmental defendants in a variety of factual contexts." *Id.* The State's narrow view of constructive notice does not square with the examples the Supreme Court has cited with approval, including all the following:

- *Erfurt v. State of California* (1983) 141 Cal.App.3d 837 (defendant had constructive notice of the dangerous condition—the glare of the rising sun reflected off the surface of a road—even though that condition had existed only 20 days a year during the 10 years since it constructed the road);
- *Straughter v. State of California* (1976) 89 Cal.App.3d 102 (public entity had constructive notice of the existence of ice on a highway even though the defendant's witnesses had testified that they had not seen ice on the highway prior to the accident, and icy conditions had begun developing less than four hours before the accident);
- *Lorraine v. City of Los Angeles* (1942) 55 Cal.App.2d 27 (city had constructive notice of a sidewalk hole which was only 18 inches long and 7 inches wide and had existed for at least a month);
- *Levine v. City of Los Angeles* (1977) 68 Cal.App.3d 481 (city had constructive notice of danger even when it received no complaints about narrowing of the road in the three years preceding the accident).

As alleged in the MC, the State knew that Topanga State Park was a breeding ground for destructive wildfires. (MC, p. 14, ¶ 57.) The State knew that the dense vegetation in the Park had not been burned for more than 47 years. (MC, p. 16, ¶ 61.) And the State knew that the Lachman

Fire occurred on January 1. (MC, p. 16, ¶ 67.) The State knew all of this, along with acknowledging that "it is common that hot material could still be found on large fires months after the fire was controlled." (MC, p. 25, ¶ 79.) Video and photographic evidence from local residents showed embers from the Lachman Fire smoldering underground — a condition that the State had six days to discover on its own land. (MC, pp. 21-23, ¶¶ 69-75.)

Despite the foregoing authorities and the allegations that establish constructive notice, the State contends that Plaintiffs fail "to establish constructive notice because [they do] 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." (Demurrer at p. 19.) But the State offers no authority for the proposition that the MC fails, as a matter of law, to allege "that the condition and its dangerousness were sufficiently obvious that [the State], in the exercise of due care, should have discovered them." *Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 780, citing Gov.Code, § 835.2, subd. (b).

After producing just one massively redacted document showing its notice of the dangerous condition Plaintiffs allege, the State now seeks to deny Plaintiffs "an opportunity to furnish additional and more exact information[.]" *Dahlquist v. State* (1966) 243 Cal.App.2d 208, 212. This Court should reject the State's attempt to claw back the "relaxation of rigidity in application of the rules relating to the sufficiency of complaints, even those where public entities are involved." *Id*. Construing the MC liberally, Plaintiffs' allegations reasonably infer that the smoldering embers "existed for such length of time and [were] of such conspicuous character that *a reasonable inspection* would have disclosed them." *Kotronakis v. City and County of San Francisco* (1961) 192 Cal.App.2d 624, 630 (emphasis added). It would be a grave error for the Court to sustain a demurrer on the issue of whether the State knew or should have known about the danger posed by the smoldering embers left on the burn scar, given the evidence of actual as well as constructive notice already marshalled in the MC. The courthouse doors should not be closed to the Plaintiffs at this juncture.

E. There Is No Governmental Immunity For Permitting A Dangerous Condition to Exist on Public Property.

1. Immunity Extends Only To Fire Protection Services.

The California Government Code provides for immunity for the failure to provide fire protection services. Notably, the immunity statutes do not say that the government is immune for any claim for damages caused by fire.[9] Rather, the limited statute applies to "services" provided to third parties "in fighting fires."[10] As a result, the government cannot be held liable for the acts or omissions of fire department employees with regard to fire protection services provided to the public **while fighting fires**. See *People ex rel. Grijalva v. Superior Court* (2008) 159 Cal.App.4th 1072, 1078 (the immunities shield public entities from liability based on "firefighting methods or tactics they employ"); *City of San Francisco v. Superior Court* (1984) 160 Cal.App.3d 837, 842 (firefighters are immune while they are "fighting fires"); *Varshock v. Dept. of Forestry & Fire Protection* (2011) 194 Cal.App.4th 635 (same); *Colapinto v. County of Riverside* (1991) 230 Cal.App.3d 147 (same); *Heimberger v. City of Fairfield* (1975) 44 Cal.App.3d 711 (same). Here, the Plaintiffs do not allege that the State performed any firefighting activities on the Lachman Fire.[11]

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[9] Section 850 provides: "Neither a public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection service." Section 850.2 provides: "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." Section 850.4 provides "Neither a public entity, nor a public employee acting in the scope of his employment, is liable for any injury resulting from the condition of fire protection or firefighting equipment or facilities or . . . for any injury caused in fighting fires."

[10] The definition of "services" is work provided to another person or entity. However, no one provides "services" to himself. *Pitney-Bowes, Inc. v. State of California* (1980) 108 Cal.App.3d 307, 315, n. 5 (*Black's Law Dictionary* defines service as "[d]uty or labor to be rendered by one person to another").

[11] Indeed, the State recently denied that it was responsible for, or in control of, firefighting activities on the Lachman Fire:

"State Parks personnel being on scene in no way means they were responsible for, or in control of, firefighting activities. Nor were they responsible for determining the fire was fully contained… State Parks never hinders an active firefighting response, and firefighting decisions are up to the responding agency. In this instance, the fire in question was deemed by LAFD to be fully contained a few hours after is was started by an arsonist." https://dailycaller.com/2025/12/01/audio-

Logically, "fire protection services" do not extend to State Park's failure to remove a known defect or dangerous condition that could start or cause a wildfire on its own property.[12] *See Vedder*, *supra*, 36 Cal. App. 3d 654. In such cases, the law requires that the property owner, whether or not it is a government entity, maintain its property in a condition that it does not pose a risk of danger to its neighbors. *See, e.g.*, *Osborn v. City of Whittier* (1951) 103 Cal.App.2d 609 (city negligently allowed a fire to spread for a city dump); *Pittam v. City of Riverside* (1932) 128 Cal.App. 57 (same).

2. Fire Protection Immunity Does Not Apply When A Public Entity Owns the Land and Allows a Dangerous Fire Condition on that Land.

The decision in *Vedder v. Cty. of Imperial*, 36 Cal. App. 3d 654 (1974) is particularly instructive under the circumstances present here. In *Vedder*, the court considered a case in which the plaintiff sought to recover damages from a fire that occurred at the Imperial County Airport due to an allegedly dangerous condition caused by the storage of gasoline and other highly combustible chemicals on the property. A demurrer was sustained on the grounds of immunity pursuant to Gov. Code § 850 and 850.2. The Court of Appeal reversed the trial court, writing:

> We also conclude the provisions of Government Code sections 850 and 850.2 are not applicable to the facts pleaded. The sections are designed to provide immunity to a public entity from the consequences which might otherwise result from its political decision to provide, or not to provide, fire protection to the public generally, and the extent to which such fire protection is in fact provided.
> The statutes must be strictly construed, and governmental immunity should not be decreed unless the Legislature has clearly provided for it. **They should not be applied to allow a public entity to escape responsibility for damages resulting from its failure to provide fire protection on property which it owns and manages itself, particularly where it has permitted a dangerous fire condition**

reportedly-shows-palisades-fire-broke-out-on-state-property.

The State insists it has no responsibility for firefighting or fire suppression decisions, yet simultaneously seeks the benefit of firefighter immunity, an immunity available only to those performing firefighting functions. The State cannot both disclaim the role and claim the privilege.

[12] An exception to this rule might possibly be a controlled burn or backfire that was started as part of a fire protection plan. But that question is "not free from doubt." See *Anderson v. U.S.* (1995) 55 F.3d 1379, 1383 n.3 ("We need not, and do not, decide whether a California public entity would be immune under the facts of this case [controlled fire in national forest escaped and burned portion of residential neighborhood]. We only note that the issue is not free from doubt.").

> **to exist on the property**. In that situation, lack of fire protection is a proper factor to be considered as contributing to the existence of a dangerous condition on the property

Vedder, 36 Cal.App.3d at 660-61 (emphasis added) (citations omitted). The court held that liability could be established even though the public entity was not principally responsible for starting the fire. "One who negligently stores gasoline and other highly combustible chemicals on his property, or knowingly permits such negligent storage, may be liable to others for a fire-incurred loss even though the fire was actually started by the negligent conduct of others." *Id*.

3. *Vedder* Is Good Law.

The two cases relied on by the State on this issue reaffirm that *Vedder* is good law. Those cases dealt with facts distinguishable from the facts in *Vedder*, leading those courts to find immunity. The important factual distinction for those courts was whether the alleged dangerous condition is an impediment to firefighting versus the cause of the fire itself. Plaintiffs here allege only the later.

In *Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 330, plaintiffs alleged that a closed roadway in Malibu created a dangerous condition that prevented fire crew from fighting a fire which destroyed plaintiffs' properties. The court held that the public entities were immune, distinguishing the case from *Vedder*:

> Although plaintiffs couched their allegations in language of a dangerous condition of public property, the only reason the condition was allegedly dangerous is that the continued closure of Rambla Pacifico made ingress for firefighters more difficult, if not impossible. . . . Plaintiffs misplace reliance on *Vedder v. County of Imperial* (1974) 36 Cal.App.3d 654, 111 Cal.Rptr. 728, which is distinguishable. . . . Here, 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. 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.

Cairns, 62 Cal.App.4th at 335-36. What distinguishes *Vedder* and the allegations against the State in the MC from *Cairns* is that the defect in the property or dangerous condition – the smoldering embers in the burn scar— actually started and **caused** the Palisades Fire, rather than merely upsetting firefighting efforts. Applying *Cairns* to the matter would necessitate overruling *Vedder*.

Likewise, in *Puskar v. City & Cty of S.F.* (2015) 239 Cal.App.4th 1248, a Yosemite forest ranger sued after burning himself because a fire extinguisher had been removed from his residential unit and not replaced, alleging the absence of a fire extinguisher in the residence constituted a dangerous condition of public property. Again, the court granted the public entity immunity, distinguishing *Vedder*:

> In *Vedder*, the alleged dangerous condition of the property was not the lack of firefighting or fire protection equipment on the premises. It was 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. Lack of fire protection was just a "factor contributing to the existence of a dangerous condition," not the dangerous condition itself. (*Vedder*, supra, 36 Cal.App.3d at p. 661.) The defendants' immunity under section 850.2 for failure to provide fire protection equipment did not extend to liability for the creation or maintenance of a fire hazard on the property, exacerbated by the failure to provide firefighting equipment. [. . .]
> Here, unlike *Vedder*, the only alleged dangerous condition of the property was the absence of a fire extinguisher from the residence at the time of the incident. **There were no allegations of unsafe storage of flammable materials, defects in the stove plaintiff was using, or any other condition of the property itself that contributed to the occurrence of the fire.**

Puskar, *supra*, 239 Cal.App.4th at 1255-56 (emphasis added).[13] The Court in *Puskar* made the distinction that *Vedder* applies to cases in which a dangerous condition is maintained on public property, resulting in a fire. Under *Puskar,* as in *Cairns*, decisions that make firefighting more difficult, like the closure of a road or the failure to provide a fire extinguisher, cannot give rise to liability. There is a difference between starting a fire and impeding the response to a fire. Only the latter concerns fire protection services for which the Government Code provides immunity.

The *Vedder* case, despite having been distinguished, is undisturbed after fifty years and remains valid precedent. In California, the law is that the firefighting immunities do not immunize

[13] The *Puksar* court stated in *dicta* that it had a limited disagreement with the rationale of *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.'" *Puskar*, 239 Cal.App.4th at 1255 (quoting *Vedder*, 36 Cal.App.3d at 660–61). This disagreement is inapposite here because in this case the condition of the property itself caused the fire, and the alleged dangerous condition is not merely a decision about the provision of fire protection services on the State's property.

a government entity that permits a dangerous fire condition to exist on its property.

F. <u>There Is No Natural Condition Immunity.</u>

The State's reliance on other immunity provisions are misplaced, charitably stated. For example, Gov. Code § 831.2 provides immunity for "natural conditions of an unimproved public property." The burn scar created by an arson fire, still smoldering with burning embers, was not a "natural condition" of the State's property. (MC, p. 9. ¶ 26.) Further, the California Supreme Court has held that section 831.2 does not apply to injuries on adjacent properties. For example, the natural condition immunity did not preclude municipal liability for injuries sustained by a private landowner from falling limbs of trees located on adjacent government property. *Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 834 ("We conclude that the natural condition immunity of section 831.2 is inapplicable to injuries caused to nonusers on adjacent property."). This is because every property owner has a duty to use and maintain its property in a manner that does not injure neighboring properties. See *Kesner*, 1 Cal.5th at 1158 (discussed above at III.A.).

G. <u>There Is No Inspection Immunity.</u>

Nor can the State rely on inspection immunity. In *Cochran v. Herzog Engraving Co.* (1984) 155 Cal. App. 3d 405, the plaintiff claimed the City was under a duty to inspect **private property** and recommend adequate fire safety measures. The Court applied immunity to the claims. "Government Code section 818.6 grants absolute immunity from liability for any 'negligent inspection' of private property to determine if such property constitutes a hazard to health or safety, whether or not the duty to inspect is construed as 'mandatory' or 'discretionary.'" *Id.* at 411. As set forth in Gov. Code § 818.6, "A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, **other than its property** (as defined in subdivision (c) of Section 830), for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety." Gov. Code § 818.6 (emphasis added). Therefore, the holding in *Cochran* is not a bar to the claims against the State for allowing the Palisades Fire to start **on its own property**. Such claims are expressly excluded from the immunity provided by Gov. Code § 818.6. Indeed, by implication section 818.6 confirms a public entity's legal duty to inspect adequately when it is the

owner of the property, in accordance with Gov. Code § 835's requirement that public entities keep their properties free of dangerous conditions that should have been discovered. Further, as discussed below, Health & Safety Code § 13007 codifies the common law principal that landowners have a duty to not allow fire to escape their land and cause harm to others.

Inspections of **private property** are precisely the type of fire protection **services** that are also covered by sections 850 and 850.2. Such services to third parties, even if negligently performed, cannot lead to governmental liability. But just as section 818.6 expressly excludes from immunity the duty to inspect the government's own property, the use of the word "services" in section 850 must be construed to exclude from any immunity the failure to maintain its own property free from known defects which could cause a fire or allow it to spread to its neighbors. Both the holding in *Vedder* and the language of *Zelig* (in the context of police protection immunity) are consistent with this reading of the immunity statutes.

H. Police Protection Immunity Is Irrelevant to This Case.

Plaintiffs do not allege that the State is liable because it did not stop an arsonist from starting the Lachman Fire on January 1. Therefore, the State's argument concerning Gov. Code § 845 (Demurrer at p. 23) is irrelevant. The MC concerns what the State did and did not do **after** the Lachman Fire was contained, *e.g.*, leaving an obvious and known dangerous condition on its property that six days later rekindled into the devastating Palisades Fire. Police protection immunity has no bearing on that question.

I. It Would Be Wrong to Hold That the State Cannot Be Liable For Injuries Caused By Fire.

The State's argument for immunity would result in the State **never** being liable for any damages caused by fire. So, for example, if there is a gas-fueled heater in a government building, and an inspection says it is seriously broken and likely to cause a fire in the near future, the State's reading of the immunities would allow the government to ignore the warning and allow the heater to start a fire with zero consequences — no liability for the damages caused, no exception. That is not the law.

Indeed, there are many published opinions holding California government entities liable for

damages caused by fire escaping their property. For example, in *Pittam v. City of Riverside* (1932) 128 Cal.App. 57, and *Osborn v. City of Whittier* (1951) 103 Cal.App.2d 609, courts addressed the question whether a government entity may be held liable for allowing a fire to escape from a city dump where trash was burned. Both cases were decided under the Public Liability Act (precursor to the Government Claims Act) and the common law of sovereign immunity that existed prior to the enactment of Gov. Code § 850 in 1963. The decisions in each case hinged on whether the dangerous condition was known by officials having authority to remedy the condition within a reasonable amount of time. In *Pittam,* the court explained as follows:

> If the proper municipal authorities had notice of a dangerous or defective condition of the dumping ground prior to the fire and permitted such condition to continue for an unreasonable time; if the fire which consumed respondent's property had spread or was carried from a fire on the dumping ground burning at a place, or one of the places, where fires were to be kindled in accordance with the plan of operation established by the municipal authorities and in operation at the time of the destruction of respondent's property; and if the fire was not spread from one wrongfully started by another agency such as trespassers on the city property, then we are of the opinion that a dangerous or defective condition of the public grounds, works or property of the city of Riverside existed which would render it liable for damages to the property of respondent.

Pittam, 128 Cal.App. at 65.

Addressing a similar situation of a fire that escaped a city dump, the Court in *Osborn v. City of Whittier* (1951) 103 Cal.App.2d 609 reversed with directions to overrule a demurrer, finding that a claim could be stated under the Public Liability Act.

> The complaint contains factual allegations of all the elements essential to a cause of action under the Public Liability Act: (1) facts showing a dangerous condition of public property; (2) actual knowledge of the dangerous condition by persons having authority to remedy the condition; (3) the lapse of a reasonable time after knowledge within which to remedy the condition, or to take such action as might be reasonably necessary to protect the public against the dangerous condition; (4) failure to remedy the dangerous condition; (5) the dangerous condition was a proximate cause of the damage; and (6) presentation of a verified claim within ninety days.

Osborn, 103 Cal.App.2d at 620.

There is no evidence that the Legislature intended to alter or limit the law of government liability for dangerous conditions when it enacted the Government Claims Act in 1963. Rather, that

enactment was necessitated solely by a momentous decision of the California Supreme Court in *Muskopf v. Corning Hospital District* (1961) 55 Cal.2d 211, discarding altogether the common law of sovereign immunity. At that time, former Government Code § 53051 of the Public Liability Act already provided for claims based on a dangerous or defective condition of public property. As the decisions in *Pittam* and *Osborn* demonstrate, such claims could be made when a known dangerous condition allowed a fire to escape public land and damage private property. The enactment of the Government Claims Act in 1963 was intended to retain the principles of fire protection immunity that then existed, not broaden them. 4 Cal. Law Revision Comm. Rep. p. 828 ("There are strong policy reasons for retaining the large measure of the [fire protection] immunity that now exists."); 4 Cal. Law Revision Comm. Rep., p. 848, West's Annotated California Codes, § 830 ("This does not change the pre-existing law relating to cities, counties and school districts.").

Indeed, more recently in a 1992 opinion involving the State itself, the State was held liable for damages caused by fire escaping State land. *See McKay v. State of California* (1992) 8 Cal.App.4th 937, 938 ("In this case we hold that Health and Safety Code section 13007 permits recovery of lost profits from a business connected to property that is damaged by a negligently set fire.").[14] *McKay*, along with *Pittam* and *Osborn*, demonstrate that the State can be held liable for damages caused by a fire that escapes State property. The State's overreaching immunity arguments are contrary to this longstanding California law and should be rejected.

J. Cases Concerning a Dangerous Condition That Causes a Fire Should Be Decided On The Facts

The import of the *Vedder, Cairns,* and *Puskar* decisions is that liability attaches when the public property *itself* was in a dangerous condition at the time of injury. All of the cases could be decided, not by immunity, but rather by evaluating whether there was a sufficiently hazardous condition. In *Cairns* and *Puskar,* there was no known inherently dangerous condition at the precise

[14] In *McKay*, the State conceded liability under Health and Safety Code section 13007 even though the *Vedder* Court held that government entities are not covered by the Health and Safety Code's definition of "persons." *See Vedder*, *supra,* 36 Cal.App.3d at 662; *McKay*, *supra*, 8 Cal.App.4th at 938. The State presumably made this concession as it would have been liable under common law dangerous condition principles regardless.

location where the fire occurred. In other words, the closed road was not itself ordinarily dangerous, nor was the cabin without a fire extinguisher. These conditions only became dangerous when **a fire started independently of the claimed dangerous condition of the property**, an occurrence that was not immediately foreseeable about which the government had no prior notice or warning. There was no specific reason to think that any damage would result from a closed road or a missing fire extinguisher in those locations at any particular time. Thus, there was no reason to find that the government should have ameliorated the condition of the road or the cabin prior to the incident. That is not the case with the Palisades Fire.

In the present case, the precise location and timing of the impending danger was known in advance. The danger posed by the burn scar of rekindling a devastating new fire in that precise location was known to authorities and immediately foreseeable. Under those circumstances, State officials had a duty to take reasonable steps to warn the public and stop the occurrence of a new, highly dangerous fire in the place where it was most likely to happen. Since members of the public could visibly see smoke coming up out of the ground in the Lachman Fire burn scar on January 1 and 2, so too could have State Park rangers have seen the smoke produced by the smoldering embers that remained on the State's land in the days following the Lachman Fire.

In *Vedder*, as in the old city dump fire case, *Osborn,* the court reversed the sustaining of a demurrer, because the plaintiffs had pled sufficient facts to allow them to prove that there was a known dangerous condition that started a fire in a known location. In other words, the city officials knew there was a defect in the property (gasoline storage without any accompanying fire protection) that could cause a dangerous fire to start. In *Cairns* and *Puskar*, by contrast, the plaintiffs could not possibly have proven dangerous condition liability, as the alleged defects (a closed road or missing fire extinguisher) could never by themselves have caused a fire.

In many respects, this case is much stronger than *Vedder*. In *Vedder*, the danger was caused by permitting the storage of gasoline without adequate fire protection. There was no specific known danger, just the potential that at some unknown time a fire could possibly be sparked near enough to the gasoline to cause great damage. In the case of the Palisades Fire, there was a known and particularized risk caused by an obvious defect in the State's property, namely, the large burn scar

left by the Lachman Fire and the continuing dry conditions and impending wind event. Similar to *Vedder*, Plaintiffs allege the complete absence of any ability to contain a fire if the embers in the burn scar rekindled because of the State Park's vast dry chaparral landscape.

Plaintiffs do not allege that the State had an obligation to protect against any fire anywhere from any cause, only that the State had the duty to take steps to rectify an obvious and known danger in this particular spot on its land (the Lachman Fire burn scar) and on these specific dates (January 1-7), when it was known to be most dangerous. It is one thing to find that the State has no obligation to put out a fire it did not cause; it is quite another to say that the State can knowingly leave smoldering embers on its property unattended for days, ready to rekindle, when it was expressly warned of a high wind event and extreme fire danger. Under those circumstances, the State had a duty to act and cannot claim a responsibility-free zone. The State's argument would swallow the dangerous-condition statute.[15]

All the defenses raised in the demurrer are questions of fact for a jury. Indeed, it is possible that after discovery the State will concede liability, and merely try the case on damages, as happened in *McKay, supra,* 8 Cal.4th 937. This case must be allowed to proceed to discovery so that the important factual questions can be fully investigated and answered. *Cf. Dahlquist, supra*, 243 Cal.App.2d at 212 (declining to affirm the demurrer sustained in dangerous condition case in part because "the doors of discovery . . . would be closed to plaintiffs")

IV. THE NUISANCE CAUSES OF ACTION SHOULD BE ALLOWED TO PROCEED.

Defendant argues that *Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379 mandates the dismissal of a nuisance cause of action if the same facts are used as the basis of an

[15] An analogous situation arises under the design immunity statute. In *Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, the California Supreme Court held that design immunity did not bar all potential claims resulting from a dangerously designed feature of a roadway. Rather, although Gov. Code § 830.6 "shields public entities from liability for injuries resulting from the design of the physical features of a roadway, they nonetheless retain a duty to warn of known dangers that the roadway presents to the public. . . . '[S]ection 830.6 was not intended to allow government entities to remain silent when they have notice that a reasonably approved design presents a danger to the public.'" *Tansavatdi*, 14 Cal.5th at 647, affirming *Cameron v. State of California* (1972) 7 Cal.3d 318.

action for a dangerous condition of public property. This is incorrect. First, *Longfellow* concerned a claim that was dismissed because the government entity did not own the property at the time of the injury, so its alternative ground for decision was unnecessary. However, second, the *Longfellow* court's reasoning has been severely criticized and not followed. In *Paterno v. State of California* (1999) 74 Cal.App.4th 68, the court explained:

> "The Tort Claims Act bars liability against public entities "Except as otherwise provided by statute[.]" (Gov.Code, § 815.) The act provides liability for a dangerous condition of public property. (Gov.Code, § 835.) **But the California Supreme Court has held Civil Code section 3479 is a statute that provides liability against public entities which maintain nuisances. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 932–937, 101 Cal.Rptr. 568, 496 P.2d 480.).** With undue qualification, a leading treatise states: "If the facts warrant, *it appears* that a plaintiff may sue for damages based on a dangerous condition of real property [and nuisance] arising from the same condition, although design immunity ... may bar relief if its elements are established by sufficient evidence. [Citations.]" (Van Alstyne et al., *Cal. Gov. Tort Liability Practice* (Cont.Ed.Bar 1992) General Liability and Immunity Principles, § 2:106, p. 195, *italics added*.) The qualification we italicize is based on an anomalous decision, *Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379, 192 Cal.Rptr. 580 (*Longfellow*), which, in an alternate holding, concluded that if a count may be stated for a dangerous condition of public property, the same facts cannot be used to allege a nuisance count. (Id. at p. 384, 192 Cal.Rptr. 580.) **This does not follow logically. That a given set of facts fortuitously supports liability on two legal theories is not a principled reason to deny a party the right to pursue each theory.** (See *Pfleger v. Superior Court* (1985) 172 Cal.App.3d 421, 429–432, 218 Cal.Rptr. 371 (*Pfleger*) [criticising *Longfellow*].)"

Paterno, 74 Cal.App.4th at pp. 103-103 (emphasis added).

As in *Paterno*, the court in *Pfleger* similarly examined and declined to follow *Longfellow*, finding its "language" rejecting a plaintiff's to recover under theories of nuisance and dangerous condition "internally inconsistent." *Pfleger*, 172 Cal.App.3d at 429. Relying on other cases distinguishable from *Longfellow*, the court reasoned that to find "the Legislature must be presumed to have impliedly prohibited a cause of action for nuisance against a public entity . . . would be too great an exercise of judicial imagination. . . . " *Id*. at 432. The court thus permitted the plaintiffs to bring causes of action for dangerous condition and nuisance simultaneously.

Additionally, the State argues that because it is authorized to maintain Topanga State Park, nothing it does with the park can be a nuisance, citing Civil Code § 3482 and *Avedon v. State of*

California. As discussed above, *Avedon* concerned a claim that merely providing public access to Malibu Creek State Park could be grounds for a claim of dangerous condition and nuisance. Neither claim was viable because public access alone was neither dangerous nor a nuisance, nor was it the proximate cause of any injury. *Avedon* does not stand for the proposition that no claim for nuisance may ever be made against a State Park.

Further, section 3482 does not give blanket immunity for all government activity. The statute is narrowly construed and applies only to actions which are expressly and clearly authorized. *Otay Land Co., LLC. V. U.E. Limited, L.P.* (2017) 15 Cal.App.5th 806, 846-47. The State cites no statute or regulation that expressly permits the maintenance of park land in an obviously dangerous condition, with a smoldering burn scar left unattended, surrounded by wild and overgrown chaparral, during a period of extreme fire danger. Here, the essential elements of a nuisance claim have been pled in the Master Complaint, and the State does not contend otherwise. Nor can the State overcome the black letter law which unambiguously holds that "the general rule of governmental immunity provided in [the Tort Claims Act] alone does not preclude a nuisance action against a government entity founded on Civil Code section 3479." *Barnhouse v. City of Pinole* (1982) 133 Cal.App.3d 171, 195, n. 14 (citing *Nestle, supra*, 6 Cal.3d 920).

The State fails to articulate a single valid claim of immunity that would entitle the State to resolve this case based on the content within the Master Complaint's four corners. The nuisance claims, as well as the government tort claims, should proceed to a merits-based decision.

V. CONCLUSION

For all of the foregoing reasons, the demurrers to the causes of action alleged in the Master Complaint against the State of California should be overruled in their entirety.

Dated: December 18, 2025

ROBERTSON & ASSOCIATES, LLP

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

Dated: December 18, 2025

FOLEY BEZEK BEHLE & CURTIS, LLP

By: */s/ Roger N. Behle, Jr.*
Roger N. Behle, Jr.
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Dated: December 18, 2025

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Matthew J. Stumpf

Dated: December 18, 2025

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By: */s/ Peter McNulty*
Peter McNulty
E. Kirk Wood

Liaison Counsel for Individual Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On December 18, 2025, I served true copies of the following document(s) described as **INDIVIDUAL PLAINTIFFS' OPPOSITION TO DEMURRER BY THE STATE OF CALIFORNIA** on the interested parties in this action as follows:

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

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

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

Maria Alegria